3381.

SUPREME COURT OF THE UNITED STATES.

No. 155.

JAMES L. CALCOTE, PLAINTIFF IN ERROR,

vs.

FREDERICK STANTON AND HENRY S. BUCKNER.

IN ERROR TO THE HIGH COURT OF ERRORS AND APPEALS OF THE STATE OF MISSISSIPPI.

INDEX.

	Original.	Print.
Caption of high court	1	1
Transcript from chancery court	1	1
Bill of complaint	2	1
Exhibit A to bill	54	31
Exhibit B to bill	59	33
Exhibit C to bill	61	35
Subpœna	63	36
Subpœna	65	38
Order of publication	66	38
Order of publication	67	39
Proof of publication	68	40
Proof of publication	69	40
Demurrer	70	41
Order overruling demurrer	72	42
Appeal	72	43
Appeal bond	72	43
Order of court approving bond	73	43
Certificate of clerk of chancery court	74	44
Minutes of high court of errors and appeals	74	44
Final decree of high court of errors and appeals	76	45
Certificate of clerk of high court of errors and appeals	78	46
Writ of error bond	79	46
Citation	82	47
Writ of error	84	48

GIDEON, printer.

THE STATE OF MISSISSIPPI.

Pleas had at a term of the high court of errors and appeals, begun and held for the State of Mississippi, at the court-room in the Capitol at the city of Jackson, on the third Monday of April, in the year of our Lord 1855.

Present, the Hon. C. P. Smith, presiding judge of said court; and the Hon. E. S. Fisher and the Hon. A. H. Handy, associate judges. Present also, Caswell R. Clifton, clerk of said court; the sheriff of Hinds county in said State, as provided by law, being also in attendance thereupon.

STANTON AND BUCKNER, appellants,
vs.
JAMES L. CALCOTE. } 7153.

Be it remembered, that heretofore, to wit, on the 16th day of October, in the year of our Lord 1854, Stanton and Buckner, appellants, filed in the office of the clerk of the said high court of errors and appeals, the transcript of the record of a suit lately pending in superior court of chancery in said State, which said suit is brought into our said high court by appeal from a decree rendered therein. Said transcript of record, with all the proceedings and final decree of our said high court of errors and appeals thereon, is in the words and figures following, to wit:

THE STATE OF MISSISSIPPI.

JAMES L. CALCOTE
vs.
FRED'K STANTON & H. S. BUCKNER. } No. 5264.

Pleas before the Hon. Charles Scott, chancellor of said State, at a superior court of chancery, held and continued at the court-room in the city of Jackson, the third day of July, 1854, in the foregoing entitled cause, wherein James L. Calcote is complainant, and Frederick Stanton and Henry S. Buckner are defendants.

Be it remembered, that heretofore, to wit, on the 28th day of March, 1854, came the said complainant, by his solicitors, and filed in the clerk's office of said court his certain bill of complaint, and procured process to be issued thereon, which bill and process are in the words and figures following, to wit:

To the honorable Charles Scott, chancellor of the State of Mississippi, in chancery, sitting at Jackson.

The bill of complaint of James L. Calcote, of the State of Mississippi, and of the county of Adams, in said State, against Frederick Stanton, of the State of Mississippi, and of the county of Adams, and

Henry S. Buckner, of the State of Louisiana, and the city of New Orleans, humbly complaining, your orator shows unto your honor, that during the year 1841 and 1842, the said defendant, Frederick Stanton, together with one Malachi B. Hamer, who departed this life in the month of April, 1842, and who was at the time of his death, and had been for several years anterior to that time, a citizen of the county of Yazoo and of Yazoo city, in said State of Mississippi; and the said defendant, Henry S. Buckner, who in the year 1841 was a citizen of the State of Louisiana, and resident beyond the limits of Mississippi, in said State of Louisiana, and has continued from the said year 1841 up to the present time a citizen of said State of Louisiana, being and residing therein, and out of the State of Mississippi, were partners in trade, doing business as commercial partners in the city of New Orleans, in said State of Louisiana, in the city of Natchez, in said county of Adams and State of Mississippi, and in Yazoo city, in the county of Yazoo and State of Mississippi. The said partners transacted their commercial business and carried on their partnership trade in the said city of New Orleans, under the partnership, firm, name, and style of Buckner, Stanton & Co., said Buckner being the resident and sole managing partner; in the said city of Natchez, under the partnership, firm, name, and style of Stanton, Buckner & Co., said Stanton being the resident and sole managing partner; and in said Yazoo city, under the partnership, firm, name, and style of M. B. Hamer & Co., said Hamer being the resident and sole managing partner; and the said Frederick Stanton, the said Henry S. Buckner, and the said Malachi B. Hamer, constituted and were the only members of said three firms.

Your orator further shows, that said three firms were entirely separate and distinct from each other, and kept their business-books and accounts accordingly, but each as before stated constituted of the same individual members; and that in the year 1841, the said three firms, and each of the individual members thereof, became and were hopelessly insolvent; but that the said Buckner and the said Stanton, and the said Hamer, up to the time of the death of the latter, continued to transact their partnership business under the said three firm names and styles; and that said Buckner and said Stanton, after the death of the said Hamer, continued to transact the said partnership business, under said three firm names and styles, at said city of New Orleans, Yazoo city, and Natchez, up to the time of the bankruptcy of said Stanton & Buckner, to be hereinafter stated; that said defendants and said Hamer, and the said three firms, up to the period of the death of the said Hamer, and the said defendants and the said three firms, after the death of said Hamer, were not only hopelessly insolvent as before stated, but continued to be so without any substantial hope of extrication from their pecuniary embarrassments, until the subsequent proceedings in bankruptcy by the said Stanton and said Buckner, to be hereinafter stated. That on the 21st day of July, in the year 1842, the said Stanton then residing in the said city of Natchez, and in the State of Mississippi, and in the southern district thereof, filed his petition in the United States district court for the southern district of Missis-

sippi, alleging that he had not been able to meet his debts and engagements, and filed in connection with said petition various schedules and inventories, showing himself to be largely indebted both individually and as a member of the three firms above described, which indebtedness he therein had not in whole or in part been created in consequence of any defalcation by him as a public officer or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary character or capacity, and which said indebtedness he had not been able to meet; and such proceedings were thereupon had in said district court in said petition, that afterwards, on the 8th day of November, A. D. 1842, the said defendant was declared, adjudged and decreed a bankrupt, under the provisions of the act of Congress of the United States entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19th, 1841, and according to his said petition, schedules, and inventories.

And your orator shows, that said Stanton, afterwards, on the 21st February, A. D. 1843, was decreed and allowed a full discharge from all his debts and engagements by the said district court, which granted him a certificate thereof on the day of , A. D. 1843, said last mentioned decree and certificate purporting to discharge him from all his indebtedness of every nature and description as set forth in his said petition and his said schedules.

Your orator further shows unto your honor, that on the 18th day of July, A. D. 1842, the said defendant, Henry S. Buckner, individually, and as a member of said three firms, filed his petition in the United States district court in and for the eastern district of Louisiana, he at that time residing in said eastern district of Louisiana, which said district court had jurisdiction of said petition and the proceedings thereunder, in which said petition he alleged that he had not been able to meet his debts and engagements, and filed in connection with said petition various schedules, and showing himself to be largely indebted both individually and as a member of three firms above described, which said indebtedness he alleged therein in whole or in part been created in consequence of any defalcation by him as a public officer or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary character or capacity, and which said indebtedness he alleged he had not been able to meet.

Your orator further shows, that the applications and petitions and proceedings thereunder, of the said Stanton and said Buckner, were made and had by them in concert with each other, under an agreement and understanding for that purpose, to obtain their several discharges from their indebtedness, on the understanding between said Buckner and said Stanton that said firms were insolvent and bankrupt, and that it was necessary, in order to their future business, that they should obtain, each of them, discharges in bankruptcy from their individual indebtedness and from their indebtedness as members of said firms. And your orator charges and shows to your honor, that said Buckner and Stanton, in pursuance of the said agreement for that purpose, went into bankruptcy as aforesaid, for the especial purpose of obtaining their

release from the debts of said insolvent firms, which your orator charges were in fact the principal, if not the sole cause of their insolvency.

Your orator further shows, that both the said Stanton and the said Buckner filed, with their aforesaid petitions, schedules of their indebtness and inventories of their effects, both individually and as members of said three firms, showing both their individual indebtedness and effects, and the partnership indebtedness and effects of each of said firms; and showing not only that each of them were individually insolvent, but that each of said firms were insolvent also. Your orator shows unto your honor, that such proceedings were thereupon had in said district court of Louisiana, on the petition of said Buckner, that, afterwards, on the 5th day of September, A. D. 1842, the said Buckner was by the said district court declared, adjudged, and decreed a bankrupt, according to his said petitions, schedules and inventories, under the provisions of said act of Congress.

And your orator would further show unto your honor, that one Joseph Sill was thereupon duly and legally appointed assignee in bankruptcy in said cause, by the said district court in said eastern district; and as such assignee, duly and legally qualified under the order of said court, and thereby all the property and rights of property, of every name and nature, whether real, personal or mixed, of the said Buckner and the said Buckner, Stanton & Co., were, by operation of law, from the time of the said decree of bankruptcy, divested out of said Buckner, and said Buckner, Stanton & Co., and vested in the said Sill, the assignee appointed by the said court for that purpose; and your orator shows, that the said Buckner, afterwards, as he has been informed and believes, on the 5th day of December, A. D. 1842, was decreed and allowed a full discharge from all his debts, of every nature whatsoever, by the said United States district court, in and for the eastern district of Louisiana, and which granted him a certificate thereof; which said decree of discharge and certificate purported to discharge him from all his indebtedness, of every and nature whatsoever.

Your orator further shows unto your honor, that among the effects and estate of Buckner, Stanton & Co., surrendered and vested in the said Sill, assignee as aforesaid, by the said Buckner, after the aforesaid decree in bankruptcy in the matter of his aforesaid petition, by and with the knowledge and approbation of said Stanton, and in pursuance of the said understanding and agreement before that time had, expressed or implied, by and between said Stanton and said Buckner, that they would apply for the benefit of said act, were two claims, being balances of account due the said firm of Buckner, Stanton & Co., from the respective firms of Stanton, Buckner & Co. and M. B. Hamer & Co. The amount of the said balance due from said Stanton, Buckner & Co. was about two hundred and fifty-four thousand nine hundred and eighty-seven dollars and twenty-one cents, and that from M. B. Hamer & Co. was about three hundred and ninety-two thousand four hundred and sixty-three dollars and ninety-two cents; in which said sums the said firms of Stanton, Buckner & Co. and M. B. Hamer & Co. were, before and at the time of the said proceedings in bankruptcy of the

said Buckner and said Stanton as aforesaid, indebted to said firm of Buckner, Stanton & Co.

Your orator further shows unto your honor, that afterwards, on the 9th day of May, A. D. 1844, on the petition of the said Sill, after due proceedings for that purpose, an order of sale was made by said United States district court for the eastern district of Louisiana, in pursuance of said act of Congress, directing and ordering the sale of all the assets, real and personal, not then before sold or compromised, of the said Buckner, and Buckner, Stanton & Co., surrendered by the said Buckner, and set forth in the inventory of the assets of Buckner, Stanton & Co., annexed to the petition of said Buckner; amongst which assets were the said two claims or balances of account due as aforesaid and owing from said Stanton, Buckner & Co. and said M. B. Hamer & Co. to said Buckner, Stanton & Co.; and that afterwards, on the 21st day of June, A. D. 1844, in pursuance of said order of sale, and in full compliance with all the terms thereof, the said two claims or balances of account were sold at public sale, at Hewlett's Exchange, in the city of New Orleans, and one Samuel W. Oakey being the highest bidder at said sale for each of said two claims, and having paid the amount of his said bids, according to law, became the purchaser thereof; by means whereof the said Samuel W. Oakey became the owner of said several claims, and entitled to have and demand payment of the same from the parties by whom they were respectively due and owing.

Your orator further shows unto your honor, that the said Joseph Sill, assignee as aforesaid, is deceased, and that there is now no assignee in bankruptcy of the said Henry S. Buckner, and said Buckner, Stanton & Co. Your orator further shows, that the said amounts or balances respectively due as above shown, from said Stanton, Buckner & Co. and M. B. Hamer & Co., became and were, before the bankrupt proceedings hereinbefore detailed, stated accounts between said firms; that the items composing the same had been rendered by said Buckner, Stanton & Co. to said indebted firms respectively, and received by them without objections, whereby the said accounts became, and were in fact, stated accounts. Your orator further shows unto your honor, that the said Frederick Stanton, in the schedules which he rendered and filed in the said United States district court, in and for the southern district of Mississippi, (with his aforesaid petition to be declared a bankrupt,) of his indebtedness as a member of the firms of Stanton, Buckner & Co. and M. B. Hamer & Co., stated that said firm of Stanton, Buckner & Co. was indebted to the firm of Buckner, Stanton & Co. in the sum of $255,625 $\frac{9}{100}$, and that the firm of M. B. Hamer & Co. was indebted to the firm of Buckner, Stanton & Co. in the sum of $392,463 $\frac{92}{100}$; and the inventory filed by the said Stanton, with his said petition of the assets of Buckner, Stanton & Co., shows Stanton, Buckner & Co. indebted to Buckner, Stanton & Co. in the exact amount of $254,987 $\frac{21}{100}$; which said several debts, so stated to be due and owing to said Buckner, Stanton & Co., your orator alleges and charges, were the same surrendered as aforesaid by said Buckner, in his inventory, with the knowledge and approbation of said Stanton as

above stated, and which were purchased by said Oakey, as aforesaid. Your orator further shows, that the said defendant, Buckner, in his inventory of the assetts and effects of the said firm of Buckner, Stanton & Co., filed in the said United States district court in and for the eastern district of Louisiana, with his said petition to be declared a bankrupt, returned the said balances of $254,987 $\frac{2}{100}$ and $392,463 $\frac{2}{100}$, as due, respectively, from the said firms of Stanton, Buckner & Co., and M. B. Hamer & Co. to Buckner, Stanton & Co.; and thus acknowledged that said two firms, of each of which he was a member, were indebted as hereinbefore stated and charged.

Further complaining, your orator shows unto your honor, that on the 18th day of November, A. D. 1844, the said Samuel W. Oakey filed his petition in the United States district court for the southern district of Mississippi, praying to be made a party to the bankrupt proceedings in the matter of the bankruptcy of the said Frederick Stanton, claiming therein to be a creditor of the said Frederick Stanton, and Stanton, Buckner & Co., and M. B. Hamer & Co., by virtue of the proceedings hereinbefore shown, as vesting in him all the right, title and interest of the said assignee in bankruptcy of said firm of Buckner, Stanton & Co., in and to the said balances due from Stanton, Buckner & Co., and M. B. Hamer & Co., and claiming as such creditor a pro rata share of the division of the property in the hands of the assignee in bankruptcy in said case.

Your orator further shows unto your honor, that the matters and questions of the petition of said Oakey were, by the said district court, adjourned into the circuit court of the United States for the southern district of Mississippi, to be there heard and determined; wherein such proceedings were subsequently had that said Oakey was, on the 19th May, A. D. 1845, decreed and adjudged to be the creditor of the said firms of Stanton, Buckner & Co., and M. B. Hamer & Co.; and the said Frederick Stanton, in the amount of the said balances, by virtue of the facts hereinbefore stated, and the claim of the said Oakey as creditor in the amount of said balances, was, by the said circuit court, ordered to be certified to the said United States district court for the southern district of Mississippi for allowance; wherein, afterwards, on the day of A. D. 1845, by the order and decree of said last-named court, the same was allowed, and by said allowance became, and was, a judgment of said court, which judgment still remains in full force, unreversed and unsatisfied; and the said Samuel W. Oakey afterwards, and prior to the year 1852, received from the division of the assetts in the hands of the assignee in bankruptcy in said case, the sum of as a pro rata on his said claims so allowed and adjudged.

Your orator further shows unto your honor, that on the 22d day of March, A. D. 1854, the said Samuel W. Oakey, by writing under seal for value received, transferred and assigned unto your orator, James L. Calcote, all his right, title, and interest in and to said balances and claims hereinbefore described and set forth, as purchased by said Oakey as aforesaid, at said sale as aforesaid, and approved and allowed as aforesaid.

And your orator further shows unto your honor, that at the time of filing of the said petition of said Stanton in said district court, the said firm of Stanton, Buckner & Co. were indebted to Alexander Montgomery and Samuel S. Boyd, partners in the practice of law, under the firm, name and style of Montgomery and Boyd, in the amount (as principal) of $1,315 51 for professional services rendered before that time to said firm, which said amount, with the sum of $170 42 interest, making principal and interest the sum of $1,485 93, was proved by the said Alexander Montgomery on the seventh day of March, A. D. 1843, in the matter of the bankruptcy as aforesaid of the said Stanton; and on which said claim so proved and allowed in said district court, the said Montgomery, on the 18th of June, 1845, received the sum of $77 67, less 33⅓ cents, by way of a pro rata dividend.

Your orator further shows unto your honor, that the said Montgomery and Boyd, for value received by writing under seal, on the 25th day March, A. D. 1854, transferred and assigned to complainant all their right, title, and interest in and to said claim or account against said Stanton, Buckner & Co., proved as aforesaid by said Montgomery.

And your orator further shows unto your honor, that neither the said Montgomery nor the said Boyd, or either of them, at any time whatsoever, until within the eighteen months last past, had any knowledge whatsoever of any of the frauds to be hereinafter stated, as practised and done by said Stanton and said Buckner, upon the said act of Congress, and upon the just rights of their creditors.

And your orator further shows unto your honor, that neither the said Boyd nor the said Montgomery, until within the eighteen months last past, had any knowledge or information whatsoever calculated to put them on inquiry in relation to the said frauds to be hereinafter stated as practised, done, and committed by said Stanton and said Buckner upon said act of Congress and their creditors; but, on the contrary, the said Montgomery and the said Boyd, until within the eighteen months last past, had supposed that the said Stanton and the said Buckner had honestly and faithfully complied with all the requirements of said act, and had thus properly and honestly obtained in good faith their respective discharges, and the certificates thereof as aforesaid, from said district court.

But now so it is, may it please your honor, within eighteen months last past your orator has discovered, and upon his information and belief states the fact to be, that, by reason of various frauds upon the said act of Congress, and their creditors, practised and committed by the said Stanton and the said Buckner, the orders and decrees of the said district courts of Mississippi and Louisiana, purporting to discharge the said defendants from all their indebtedness, as hereinbefore stated, and the certificates thereof granted by the said courts, as hereinbefore stated, were, and are, utterly null and void, and of no force or validity whatsoever as against your orator.

Your orator shows and states unto your honor, that the said commercial firms of Buckner, Stanton & Co., and Stanton, Buckner &

Co., and M. B. Hamer & Co. had been in existence and transacting their partnership business, as hereinbefore stated, since a period anterior to the year A. D. 1837; that during the latter year the said firms, each and all, became insolvent, and were compelled to suspend the payment of their liabilities; but afterwards, by great efforts, were able to resume their partnership business. But your orator charges in fact that the said commercial firms never recovered from the embarrassments which overtook them in the said year of 1837, and were never able to extricate themselves from the numerous and complicated difficulties in which they were entangled.

Your orator in fact charges, that after the year 1837 the commercial career of the said firms was a vigorous but unsuccessful struggle against those difficulties and embarrassments which finally overwhelmed them.

During the year 1841 it was apparent that the affairs of said firms were hopeless; and in fact your orator charges, that during that year judgments were obtained against the said defendant Stanton, in the State of Mississippi, as a member of said firms, for over $9,000; executions on which were returned Nulla bona, as will appear by reference to a letter addressed to Stephen Duncan, under date August 25th, 1842, written by the said defendant Stanton, a copy of which is filed, marked A, and prayed to be taken as part of this bill of complaint. And your orator in fact shows unto your honor, that from an early period in the year 1841, down to the period of the bankruptcy of the said Stanton and said Buckner, there was no material change for the better in the condition of the affairs of said firms; and your orator especially states to your honor, and shows that, from and after the time of the various preferences, payments, *trans* and conveyances, and concealments, and frauds, to be hereinafter more fully specified, and for a considerable time prior to the same, there was no change in the condition of the affairs of said firms for the better.

Your orator further shows, that, by reference to said Exhibit A, it will appear, and the truth is so, that as early as the 1st July, in the year 1842, judgments were rendered against the said Buckner for over thirty thousand dollars, as a member of said firms, which said indebtedness was due for a considerable period of time anterior to said date.

Your orator further shows unto your honor, that most if not all of the indebtedness of the said firms, which constituted in fact their insolvency, was due prior to the first of March, in the year 1842, the period of time at which the various preferences, payments, transfers, conveyances, concealments, and frauds hereinafter specified began; and prior to that time the said firms were unable to meet their engagements then pressing upon them. Your orator will hereafter, if desired, file copies of the schedules of indebtedness which the said Stanton and the said Buckner filed with their respective applications to be declared bankrupts, showing the amount of their indebtedness as individuals and as members of said firms to have been due (mostly) before the said first of March, 1842.

In fact, your orator charges and states unto your honor, that prior to

the said first of March, in the year 1842, the said firms of M. B. Hamer & Co., Stanton, Buckner & Co., and Buckner, Stanton & Co., and the said Frederick Stanton and Henry S. Buckner, individually, and prior to his death the said Hamer also, were utterly and hopelessly insolvent; and that said defendants, and the said Hamer during his lifetime, and the said defendants after the death of said Hamer, well knew their condition individually and as members of said firms at the time; and that in fact their financial condition was never, after that time and prior to their proceedings in bankruptcy, in any degree ameliorated.

In view of their then condition, your orator shows that the said Stanton and the said Buckner, before the first March, 1842, or about that time, mutually agreed to go into bankruptcy; and contrary to the letter and policy of said act of Congress, in fraud of said act, and with intention to deprive their general creditors of their rights under the same, did proceed, from and after said first March, 1842, to make various payments, conveyances, transfers of property and effects, concealments of property, agreements, and to give various securities, in contemplation of bankruptcy, and for the purpose of giving to various creditors, endorsers, sureties, and other persons, preferences and priority over their general creditors and the general creditors of said firms. By way of more particular specification, your orator charges and shows, that on the 29th Jan'y, 1840, there fell due, in the Commercial Bank of Natchez, a note of the firm of Stanton, Buckner & Co., dated Jan'y 26th, 1839, payable twelve months after date, and endorsed by A. L. Bingaman, William M. Helm, and John N. Helm, for the sum of $15,228, which was duly protested for non-payment; the interest on this note, up to the 19th May, 1842, amounted to twenty-seven hundred and seventy-two dollars and ninety-eight cents, which, with three dollars and fifty cents, the fees of protest, made the sum of $18,005 48, the amount due on said note on said 19th May, 1842.

Your orator also shows, that on the 2d Feb'y, 1840, another note, drawn by Stanton, Buckner & Co., fell due in the said Commercial Bank of Natchez, which was dated Jan'y 30th, 1839, and payable twelve months after date, endorsed by Girard C. Brandon and William M. Helm, for the sum of $14,702 74, which was duly protested for non-payment; the interest on this note, your orator shows, up to the 26th May, 1842, amounted to $2,665 45, which, with three dollars and fifty cents, the fees of protest, made in all the sum of $17,371 69 due on said 26th May, 1842.

Your orator shows unto your honor, that the said John M. Helm, William M. Helm, and Girard C. Brandon were the brothers-in-law of said Frederick Stanton, and the said A. L. Bingaman was the particular friend of the said defendant, Frederick Stanton.

And the said Frederick Stanton, for the purpose of giving priority and preference to the said endorsers over the general creditors of said Stanton and said firms, and saving them harmless on said notes, and in fraud of said act of Congress, on the 19th day of May, 1842, in

contemplation of bankruptcy, and with a full knowledge of his then utter and hopeless insolvency, and that of the three firms of which he was a member, and also of the said Buckner, obtained, to be discounted in the said Commercial Bank of Natchez, in favor of Stanton, Buckner & Co., the following notes, the property of Stanton Buckner & Co., that is to say: One note of J. Dunbar in favor of Stanton, Buckner & Co., and by them endorsed, dated May 18th, 1842, and payable the first and fourth of Jan'y, 1843, for the sum of $575 44; the nett proceeds of which *of which* note, discounted to said Stanton, Buckner & Co., on said 19th May, 1842, were $550 08. One note drawn by D. H. Cooper and Wm. M. Wood in favor of Stanton, Buckner & Co., and by them endorsed, dated March 19th, 1842, and due the 19th and 22d Jan'y, 1843, for $2,248 09; the nett proceeds of which, discounted to said Stanton, Buckner & Co., on said 19th May, was $2,141 17. One note drawn by Jno. L. Moseby and F. Davis in favor of S. B. Newman, and endorsed by him and by said Stanton, Buckner & Co., dated Jan'y 4th, 1842, payable 15th and 18th Feb'y, 1843, for the sum of $1,879 20; the nett proceeds of which, discounted on said 19th May, 1842, to Stanton, Buckner & Co., were $1,780 10. One note drawn by J. S. Jiffries in favor of Stanton, Buckner & Co., and by them endorsed, dated Oct. 18th, 1841, payable 1st and 4th Jan'y, 1843, for the sum of $4,101 84; which said note was secured by deed of trust; the nett proceeds of which note, as discounted to said Stanton, Buckner & Co., on the said 19th May, 1842, amounted to the sum of $3,920 90. One note drawn by James Boazman, Wm. Roberts, and Asa Robinson, in favor of Stanton, Buckner & Co., endorsed by the latter, dated Feb'y 14th, 1842, and due 1st and 4th March, 1843, for the sum of $4,390 98; which said note was secured by mortgage, and the nett proceeds of which, discounted to said Stanton, Buckner & Co. on said 19th day of May, 1842, was $4,147 61. Also, three other notes, drawn by the same parties last mentioned, in favor of and endorsed by Stanton, Buckner & Co., for the same amount as the last note, and bearing the same date and equally secured by mortgage, but which fell due respectively on the 1st and 4th days of March, 1844, 1845, and 1846; and the nett proceeds of which respectively, as discounted to said Stanton, Buckner & Co. on said 19th day of May, 1842, amounted to the several sums of $3,761 57, $3,589 35, and $3,369 03. The whole nett proceeds of said notes thus discounted to Stanton, Buckner & Co. on the said 19th day of May, 1842, by said Commercial Bank, amounted to the sum of $23,259 $\frac{81}{100}$.

Your orator further shows unto your honor, that afterwards, on the 26th day of May, 1842, for the purpose of giving priority and preference over the general creditors of said Stanton, and of said firms, to the said endorsers on said two notes above described as falling due respectively on the 26th and 29th January, 1840, and on the 30th January, and 2d February, 1840, his brothers-in-law, and saving them harmless as aforesaid on said notes, and in fraud of said act of Congress, in contemplation of bankruptcy, and full knowledge of his then

utter and hopeless state of insolvency, and that of the three firms of which he was a member as aforesaid, the said Stanton obtained to be discounted in favor of Stanton, Buckner & Co., in said Commercial Bank of Natchez, the following notes, the property of Stanton, Buckner & Co., viz., one note drawn by James Cummings and Caleb Stowers in favor of Stanton, Buckner & Co., and by them endorsed, dated May 20, 1842, and due 20th and 23d December, 1842, for $638, the nett proceeds of the discount of which note discounted in favor of Stanton, Buckner & Co., amounted to $612 30; another note drawn by Ann W. Winston and D. Stanton, in favor of Stanton, Buckner & Co., and by them endorsed, dated May 16, 1842, payable 15th and 18th February, 1843, for $4,098 98; the nett proceeds of which discounted to Stanton, Buckner & Co., amounted to $3,888 31, making in all realized on said 26th May, 1842, from discount of said last two notes, the sum of $4,500 61.

Your orator further shows unto your honor, that said Stanton, under the name of Stanton, Buckner & Co., and acting for them, on the said 19th and 26th days of May, 1842, or about that time, checked for, or otherwise received the whole amount of said several discounts, amounting in all to about the sum of $27,760 42, and in fraud of said act of Congress, and in contemplation of bankruptcy, with a full knowledge of the hopeless insolvency of himself and the said Buckner, and the said several firms, and with the purpose to give priority and preference over the general creditors of himself and said firms to the said endorsers on the two notes first hereinbefore, his brothers-in-law, and particular friend, the said A. L. Bingaman, to save them harmless, and thus to deprive the other creditors of him, the said Stanton, and of said commercial firms, of their rights under said act of Congress, made payment of the said sum, or the largest part thereof, either in the shape of said checks or of money, together with other money in the hands of said Stanton, or Stanton, Buckner & Co., amounting in all, with the sums as aforesaid discounted, to about $35,377 17, to the said bank, in payment and discharge of said two notes first hereinbefore described, on which the said William M. Helm, John N. Helm, Girard C. Brandon, and A. L. Bingaman were endorsers; all of which your orator charges was done in contemplation of bankruptcy, in fraud of said act of Congress, and with the purpose to give priority and preference to the said endorsers over the general creditors of the said Stanton, and said Buckner, and said firms.

Your orator would further show unto your honor, that a portion of said sum of $35,377 17, so paid as before stated, to wit, about the sum of $7,619 39, was paid on or about the 16th May, 1842, in contemplation of bankruptcy as aforesaid, and with the purposes aforesaid, and was made for said Stanton, Buckner & Co., by the said Stanton, as your orator is advised, not from the proceeds of the aforesaid discounts, but was obtained by him from what sources your orator is not advised.

Your orator further shows unto your honor, that the said discounts

so made by the said Commercial Bank of Natchez in favor of the said Stanton, Buckner & Co., were made upon understanding, either express or implied, between the said Stanton, or Stanton, Buckner & Co., and the said bank, and on the condition, and none other, either express or implied, between said bank and said Stanton, or Stanton, Buckner & Co., that the proceeds of said discounts, or the largest portion thereof, should be appropriated to the payment of the said two notes of Stanton, Buckner & Co., first hereinbefore described, and your orator shows that this arrangement, or understanding, and agreement was made by the said Stanton, or Stanton, Buckner & Co., in fraud of the said act of Congress, in contemplation of bankruptcy, with full knowledge of his and their then hopeless insolvency, and with the purpose to give priority and preference to the said bank over the general creditors of said Stanton and said firms, and that such agreement was made for the purpose of preferring said bank by assigning to it good and valuable notes in payment of its said claims, and as such was a fraud on said act of Congress and the rights of creditors.

Your orator herewith files a statement from the books of said Commercial Bank of Natchez, showing the dates, amounts, and parties to said notes discounted to Stanton, Buckner & Co., on the 19th and 26th May, 1842, and also the two first notes hereinbefore described, and the applications of the proceeds of said discounts; said statement is marked exhibit B, and prayed to be taken as part of this bill of complaint.

Your orator further shows unto your honor, that the aforesaid discounts, payments and preferences, so made and done by the said Stanton in contemplation of bankruptcy, and for the purposes aforesaid, were done with the knowledge and approbation of the said Buckner, and in contemplation of bankruptcy by the said Buckner, with full knowledge of him, the said Buckner, of their utter and hopeless insolvency, and that of said Stanton and said firms, and for the purpose of giving the priorities and preferences aforesaid, and under the understanding then and before that time had between the said Buckner and the said Stanton, either express or implied, that they would petition to be declared bankrupts, under said act of Congress; and so your orator charges that the same were, both on the part of the said Buckner and the said Stanton, a fraud upon the said act, and on the creditors of the said defendants and of said firms.

Your orator further shows unto your honor, by way of more particular specification, that in the month of June, in the year 1842, only one month or a little before the said applications of the said Stanton and Buckner to be declared bankrupts as aforesaid, and at a time when the said Stanton and the said Buckner were in contemplation of bankruptcy, the said firm of Stanton, Buckner & Co. were indebted to one John A. Sanderson in the sum of about $6,200; and about that time with the purpose of giving a priority and a preference to the said Sanderson over the general creditors of said Stanton, and Stanton, Buckner & Co., who was a very wealthy planter and a large customer to the said firm, who shipped, annually, about two thousand bales of cotton to

them, and whose custom the said Stanton and the said Buckner were desirous to retain, as they intended to continue their commercial dealings under a new commercial partnership, or partnerships, notwithstanding their contemplated bankruptcy, the said Frederick Stanton acting for Stanton, Buckner & Co., in contemplation of bankruptcy, with a full knowledge of his aforesaid insolvency, and that of the said Buckner, and of the said firms of which they were members, with the purpose to give priority and preference to the said Sanderson over the general creditors of said parties, and said firm of Stanton, Buckner & Co., and in fraud of said act of Congress, transferred and assigned in payment of said debt to the said Sanderson, a certain draft of John P. Walworth, then the property of said firm of Stanton, Buckner & Co., amounting to about 1,225 dollars; also James G. Carson's draft, then the property of said firm, for $896 12; also a certain draft of William St. John Elliott, then the property of said firm, for 587\frac{35}{100}$, all of which said drafts were subsequently paid to said Sanderson by the parties liable thereon, and with a like purpose to give the said Sanderson a priority and preference over the general creditors of said Stanton, and said Stanton, Buckner & Co., and in fraud of said act of Congress, said Stanton, as aforesaid, paid a balance of about $760 to the said Sanderson, by depositing the same to the credit of the said Sanderson in the Commercial Bank of Natchez, or some other bank in said city of Natchez; all of which your orator charges was done by the said Frederick Stanton, for said firm, with the purpose above stated, and, as your orator charges, was a fraud upon the said act of Congress and their creditors.

And your orator further shows unto your honor, that about the same time the said firm of Stanton, Buckner & Co., in contemplation of bankruptcy, acting through the said Frederick Stanton, for the purpose of giving a priority and preference to the said Sanderson over the general creditors of said Stanton, Buckner & Co., and in fraud of said act of Congress, paid other sums of money on their said indebtedness to said Sanderson, (but your orator is not advised how much,) upon the checks of the said Sanderson.

Your orator further shows unto your honor, that the last aforesaid transfers, assignments, and payments, made and done by the said Stanton, in contemplation of bankruptcy, and for the purposes aforesaid, were made and done with the knowledge and consent of said Buckner, in contemplation of bankruptcy, by said Buckner, with full knowledge of the said Buckner of their hopeless insolvency, and that of said three firms, and of said Stanton, and for the purpose of giving priority and preference, as last aforesaid, to said Sanderson, over the general creditors of said Stanton, Buckner & Co., and under the understanding then and before that time had between said Buckner and said Stanton, either express or implied, that they would go into bankruptcy under said act of Congress; and your orator charges that said transfers, assignments, and payments were, both on the part of said Stanton and said Buckner, a fraud upon said act of Congress and said creditors.

Your orator would further show unto your honor, by way of more particular specification, that in the spring of the year 1842, Stanton, Buckner & Co., were indebted to one John Knight in the sum of $5,000, but your orators are not informed what was the nature of said indebtedness, and for the purpose of giving a priority and preference to the said John Knight over the general creditors of the said Stanton, Buckner & Co., in contemplation of bankruptcy, with full knowledge of the insolvency of himself, and the said firms of which he was a member, and in fraud of said act of Congress, the said Frederick Stanton, acting for the said firm of Stanton, Buckner & Co., transferred and delivered as collateral security to the said John Knight, at some period in the spring of 1842, and after the first of March of that year, (but your orator cannot give the precise date,) a certain note, then the property of said Stanton, Buckner & Co., for about the sum of $6,000, due the 11th December, 1842, on which the said Buckner, Stanton & Co. were liable as drawers, and on which one Stephen Duncan was liable as surety of the said Stanton, Buckner & Co., or Buckner, Stanton & Co., or the said Stanton.

Your orator further shows unto your honor, subsequent to this transfer, but at what precise time your orator is not able to say, the said Stanton paid, or by some arrangement settled, the amount of said five thousand dollars with the said Knight, or agreed with the said Knight that he, the said Knight, should take the said $6,000 note in payment thereof, and account for the balance; and that this was done by the said Stanton, in contemplation of bankruptcy, for the purpose of giving the said Knight a priority and preference over the general creditors of said Stanton, Buckner & Co., with a full knowledge of his insolvency, and that of said firms, and in fraud of said act of Congress. As evidence of this charge your orator shows unto your honor, that the schedules and inventories filed by the said Stanton, with his said bankrupt proceedings, contain no notice whatever of the said $5,000 indebtedness to said Knight, but, on the contrary, the inventory returned by said Stanton of the assets of said Stanton, Buckner & Co., with his petition in bankruptcy, shows an indebtedness of the said Knight to the said Stanton, Buckner & Co., therein charged, $930 11; and the schedule returned by said Stanton with his said petition of his indebtedness, as a member of the firm of Buckner, Stanton & Co., shows him to be indebted to said Knight in the amount of said $6,000 note.

And your orator further shows unto your honor, as he is informed and believes, whilst the said Knight held the said $6,000 note, either absolutely or as collateral security, as above stated, some arrangement or agreement was made, by the said Stanton with said Knight, by which said Knight, either by the transfer of property or security, or otherwise, was secured in the payment of the said debt, all of which your orator charges was done by said Stanton in contemplation of bankruptcy, in fraud of said act of Congress, and for the purpose of giving priority and preference to said Knight over the general creditors of said Buckner, Stanton & Co.; and your orator further charges,

that, if mistaken in the allegation that said $6,000 note was absolutely transferred by some arrangement to said Knight, but continued to be held as collateral security, then the said Stanton made some arrangement or agreement with said Knight, by which said Knight, either by the transfer of property or securities, or otherwise, was secured in the payment of said sum of $5,000, due him as aforesaid; all of which your orator shows was done by the said Stanton in contemplation of bankruptcy, and for the purpose of giving said Knight a priority and preference on his said claim of $5,000 over the general creditors of Stanton, Buckner & Co.

And your orator files, as evidence of this last charge, a copy of a letter written by the said Stanton to Stephen Duncan, one of the endorsers on said $6,000 note, which letter was dated Sept. 14th, 1842, and in which said Stanton assured said Duncan, although he was then utterly and hopelessly insolvent, and his application to be declared a bankrupt was yet pending, that he "can safely say the said $6,000 note will never trouble him, the said Duncan." The said copy of said letter is marked Exhibit C, and is prayed to be taken as a part of this bill of complaint; but your orator charges, that in fact, that by the payment or settlement of the said $5,000 due to the said Knight by the said Stanton, Buckner & Co., or the said Stanton, the said $6,000 note would have reverted, and did revert to the said Stanton, Buckner & Co., and would have constituted, and did constitute, a portion of the assetts of said Stanton, Buckner & Co., and as such ought to have passed to the assignee of said Stanton, and Stanton, Buckner & Co.; but your orator shows unto your honor, that although the said Stanton returned the said Knight in his inventory as a debtor to said Stanton, Buckner & Co., in the sum of $930 $\frac{1}{100}$, from which it is evident that said $5,000, due from them to Knight, must have been settled and paid, yet the said Stanton, for the purpose of giving a priority and preference to said Stephen Duncan and A. L. Bingaman, or one of them, as the endorser of said note of Buckner, Stanton & Co. for $6,000, over the general creditors of him the said Stanton, and of said firms, and to save them harmless from their liability on said note, and fraudulently to deprive the general creditors of Stanton, Buckner & Co. of their right to subject the said note to the payment of their claims, fraudulently and knowingly concealed and failed to place the said note in the inventory of assetts of either himself or said Stanton, Buckner & Co.

Your orator in fact charges, that by some arrangement, the exact nature of which he is not able to state, but for the purpose of giving a fraudulent preference and priority to the said Knight and the said Duncan and Bingaman, or one of them, over his general creditors, and those of Stanton, Buckner & Co., in contemplation of bankruptcy, and in fraud of said act, the said Stanton effected a settlement of the amount due to the said Knight, of the amount of $5,000; yet, with the understanding that the said Knight was to continue to hold the said note of $6,000, so that the same should not go into the inventory

of Stanton, Buckner & Co., and thus the said Knight would be paid, and the Duncan and Bingaman, as the endorsers of Buckner, Stanton & Co., be saved harmless, to the prejudice and injury of the general creditors of Stanton, Buckner & Co.; all which your orator charges was done in contemplation of bankruptcy, and in fraud of said act of Congress, and of the creditors of said Stanton, Buckner & Co., and said Stanton.

Your orator calls upon said Stanton to answer, and show what arrangement, agreement, or understanding was made between him and the said Knight, or other persons, by which the said Knight received satisfaction of his said $5,000, and yet the said note of $6,000, which, in that event, became the property of Stanton, Buckner & Co., did not go into the inventory, and by which the said Stanton was able, in September, so confidently to assure the said Duncan that he would not be troubled by his liability on said note.

Your orator further shows unto your honor, that since the bankruptcy of said Stanton, the books of the said firm of Stanton, Buckner & Co. have, by some means, passed into the hands and are now in the possession of said Stanton: he calls upon him to produce said books, and he charges that they will show the nature of said arrangements with said Knight, and also other and fraudulent arrangements, preferences, agreements, transfers, and concealments, made by said Stanton for himself and said Stanton, Buckner & Co., in the spring and summer of 1842, in contemplation of bankruptcy, and in fraud of said act of Congress and said creditors.

Your orator further expressly states, that the said note of $6,000 was not paid by the firm of Buckner, Stanton & Co., who were primarily liable for the same; and in evidence of this he shows, that the said Buckner returned the said note in his schedule of the indebtedness of the latter firm, as still outstanding against them in the hands of said Knight.

Your orator shows further, that, if he is mistaken in charging that said Stanton, Buckner & Co., or said Stanton, actually settled or paid the sum of $5,000 to said Knight, yet they gave him such assurances or guarantees, or promises of future payment, as to induce him to withhold the said $6,000 note, subject conditionally, or otherwise, to the future control of the said Stanton, or Stanton, Buckner & Co.; and thus, while he was to receive satisfaction of the amount actually due him, yet the $6,000 note was to be thus fraudulently withheld from the general creditors of said Stanton, or Stanton, Buckner & Co.; all of which your orator expressly charges was done by the said Stanton in contemplation of bankruptcy, when he knew his utter insolvency, and that of said firms, and in fraud of said act of Congress, and for the purpose of giving priority and preference to said Duncan and Bingaman, and said Knight, or one or some of them, over the general creditors of said firms or of the said Stanton.

Your orator further shows unto your honor, that the aforesaid transfers, arrangements, concealments, and agreements, in reference to

the said indebtedness to said Knight, and said $6 000 note, made and done by said Stanton in contemplation of bankruptcy, in fraud of said act of Congress, and for the purpose of giving priority and preference over the general creditors of said Stanton, Buckner & Co., and Buckner, Stanton & Co., to the said Duncan and the said Bingaman, and the said Knight, or one or some of them, were done and made with the knowledge and assent of the said Buckner, in contemplation of bankruptcy by the said Buckner, in fraud of said act of Congress, for the purpose of giving the priorities and preferences last aforesaid, and under the understanding then and before that time had between said Buckner and said Stanton, that they would go into bankruptcy under said act of Congress; and so your orator charges that the same were, both on the part of said Stanton and said Buckner, frauds upon the said act of Congress and said creditors.

Your orator, by way of more particular specification, shows unto your honor, that in the spring and summer of 1842, and after the 1st March, A. D. 1842, the said Stanton, Buckner & Co. held an acceptance or note, your orator cannot say positively which, of the firm of Buckner, Stanton & Co. for about the sum of $2,500, due the 18th December, 1842, which was endorsed by the said Stephen Duncan; and your orator shows that the said Buckner and said Stanton, in contemplation of bankruptcy, in fraud of said act of Congress, and for the purpose of giving priority and preference over the general creditors of said Buckner and said firms, to one L. C. Duncan, who was the security of said Buckner upon an appeal bond given by said Buckner to appeal from a judgment against him for about two thousand dollars, as a member of one of said firms, transferred to said L. C. Duncan said note or acceptance for $2,500, as collateral security against his liability on said appeal bond.

Your orator further shows, that he is informed and believes, and so charges the fact, that the said L. C. Duncan incurred no liability on the said appeal bond, or, if he did, was saved harmless by said Buckner, or the said Stanton, or both; and that the said note or acceptance of said Buckner, Stanton & Co., so endorsed by Stephen Duncan, for $2,500, constituted and was a part of the assetts of said Stanton, Buckner & Co. at the time of said Stanton's bankruptcy; but your orator shows that the said Stanton, with knowledge and assent of said Buckner, in fraud of said act of Congress, for the purpose of giving priority and preference to said Stephen Duncan over the general creditors of said Stanton, Buckner & Co., and contemplation of bankruptcy, fraudulently and knowingly concealed and failed to place in his inventory of the assetts of Stanton, Buckner & Co. said acceptance or note of $2,500, but withheld the same, with the intention of saving himself, the said Duncan, and defrauding the general creditors of said Stanton, Buckner & Co. of their just rights; all of which your orator charges was done knowingly and fraudulently, and in fraud of said act of Congress and said creditors.

Your orator further shows unto your honor, that on the day

of May, A. D. 1842, the said firm of Stanton, Buckner & Co. was indebted to the Planters' Bank of the State of Mississippi in the sum of $3,101 $\frac{77}{100}$, or thereabouts; and that said Stanton and Buckner, as members of each of said firms, were indebted to said bank in said amount.

Your orator shows, that being thus indebted to said bank as a member of each of said firms, the said Stanton, with the knowledge and assent of said Buckner, on the 31st of May, 1842, both of them in contemplation of bankruptcy, knowing their utter insolvency, and that of said firms, and of said Stanton and said Buckner, in fraud of said act of Congress, and for the purpose of giving priority and preference to said bank over the general creditors of said firms, or of said Stanton or of said Buckner, paid the said Planters' Bank the sum of $1,000, or thereabouts; and afterwards, on the fourth of June, 1842, also in contemplation of bankruptcy, in fraud of said act, fully knowing their aforesaid insolvency, and that of said firms, and for the purpose further of giving a preference and priority to said bank over the general creditors of said firms, or of said Stanton, or of said Buckner, paid to the said bank the further sum of $600, or thereabouts.

Your orator shows, that the balance of said debt to the Planters' Bank was rendered by said Stanton in his schedule of the indebtedness of Stanton, Buckner & Co.; but that promised both before and after filing said petition and schedule, to John P. Walworth, President of said bank, to pay said balance; and afterwards, on the day of A. D. , being threatened with a suit in regard to said balance, did pay to the assignees of said bank said balance.

Your orator further shows unto your honor, by way of more particular specification, that prior to the first of March, 1842, Frederick Stanton was indebted to the Planters' Bank of the State of Mississippi in the amount of two notes, drawn by himself individually, and due 15 | 18th of February, 1842, for $81,462 74.

And your orator further shows, that prior to the 1st of March, 1842, the said Stanton and the said Buckner, as members of the firm of Stanton, Buckner & Co., were also indebted to the said bank in the amount of the first of the above two notes drawn by Frederick Stanton, which was in fact drawn in favor of Stanton, Buckner & Co., and by them endorsed.

And your orator shows, that prior to the said first of March, 1842, the said defendants, Stanton and Buckner, as members of the firm of Stanton, Buckner & Co., were indebted to the said Planters' Bank in the amount of the following notes: one drawn by Stanton, Buckner & Co. in favor of J. Raily, and endorsed by him and John M. Helm, and A. L. Bingaman, due 1st | 4 February, 1842, for the sum of $19,869 $\frac{95}{100}$; one note drawn by Stanton, Buckner & Co., in favor of Wm. M. Helm, and endorsed by him and by J. Raily, and John N. Helm, due 1st | 4 February, 1842, for $19,869 $\frac{95}{100}$; one note drawn by Stanton, Buckner & Co., in favor of John N. Helm, endorsed by him and J. Raily, and A. L. Bingaman, due 1st | 4 Feb-

ruary, 1842, for $19,869 $\frac{95}{100}$; one note drawn by Stanton, Buckner & Co., in favor of A. L. Bingaman, endorsed by him, by J. Raily, nd John N. Helm, due 1st|4 February, 1842, for $19,869 $\frac{95}{100}$; one note of Stanton, Buckner & Co., in favor of G. C. Brandon and W. L. Brandon, and Wm. N. Helm, due 1st|4 of February, 1842, for the sum of $19,869 $\frac{95}{100}$; and one other note of Stanton, Buckner & Co., in favor of Montgomery & Mitchell, and endorsed by them and John N. Helm, due 1|4 Feb'y, 1842, for $19,869 $\frac{95}{100}$, making, in all, the indebtedness of said Stanton on said individual notes about $90,048 $\frac{24}{100}$ to said bank, and the indebtedness of said Stanton and said Buckner, as members of the firm of Stanton, Buckner & Co., on said last-mentioned endorsed notes, $119,219 $\frac{70}{100}$; all of which had matured and were duly protested, and were not paid on the said first of March.

Your orator shows unto your honor, that said John W. Helm, William M. Helm and G. C. Brandon, were the brothers-in-law of said Stanton, and the said J. Raily and the said W. L. Brandon and A. L. Bingaman were particular friends of said Stanton and the said Buckner.

Your orator further shows unto your honor, that the said Buckner, in contemplation of bankruptcy, in fraud of said act of Congress, and for the purpose of giving privilege and preference to said J. Raily and John W. Helm, over the general creditors of said Stanton, Buckner & Co., on or about the 11th of March, 1842, made a sale and transfer of certain property in the city of New Orleans, known as the Julia street property, being lot No. 5, as per plan at Christy's, notary public, to James Raily and said John N. Helm, by an act passed before D. L. McCoy, notary public, there being a house on said lot, for the sum of $10,700, for which the said Helm and Raily gave four promissory notes, payable to the Planters' Bank of Mississippi, for $2,675 each; payable one, two, three and four years after date, each note bearing interest at 8 per centum per annum from date until paid.

Your orator further shows, that on or about the 11th or 12th of March, 1842, the said Buckner, in contemplation of bankruptcy, with a full knowledge of his own insolvency and that of said firms of said Stanton, and for the purpose of giving said Raily and said John N. Helm a priority and preference over the general creditors of himself and said Stanton, Buckner & Co., made a sale and transfer of certain property in Lafayette, in the State of Louisiana, being eighteen lots of ground, situated in Queen's Faubourg, in said Lafayette, in the square bounded by Peytonica, St. Andrew's, Ursula and St. Mary's streets, numbering from one to eighteen inclusive, of a plan drawn by W. Rollnax, engineer, dated 3d of January, 1837, and annexed to the act passed before H. B. Cenas, notary public, on the 27th of January, 1837; for which said property the said Helm and said Raily gave their four promissory notes, dated March, 1842, payable to the Planters' Bank of the State of Mississippi; payable one, two, three and four years after date, with interest at 8 per centum per annum from date until paid,

each for $3,666 66⅔, amounting to $14,666 66⅔; and, in addition, the said Raily and Helm also assumed the payment of four notes, drawn by G. R. Stringer and O. P. Jackson, payable 25th of June, 1843, for $473 33⅓ each, secured by lien or mortgage on said Lafayette property, amounting to $1,893 33⅓; also assumed the payment of defendant's (H. S. Buckner's) two notes, payable to O. P. Jackson and G. R. Stringer, due on the 27th of June, 1843, for $720 each, secured by lien or mortgage on said Lafayette property, amounting to $1,440; making in all the sum of $18,000 for said Lafayette, or $28,700 for the Julia street and Lafayette property.

Your orator further shows unto your honor, that said transfers and sales were made in contemplation of the respective bankruptcy, as aforesaid, of said Buckner and said Stanton, in fraud of said act, for the purpose of giving priority and preference to said Helm and Raily, in the following manner, that is to say: it was expressly agreed and stipulated between the said Raily and Helm and the said Buckner, that the former should have the privilege of offering for discount, in the Planters' Bank of the State of Mississippi, the notes executed by the latter for the Julia street and Lafayette property, with other notes to be executed by the said Helm and Raily, sufficient to make up the amount for discount in the Planters' Bank; the proceeds to be applied to the payment of the 1st and 3d notes of Stanton, Buckner & Co., for $19,869 $\frac{95}{100}$ each, due the Planters' Bank as above described; on one of which notes the said Raily was the first endorser, and on the other the said Helm was the first endorser. And your orator further shows unto your honor, that the said notes, so executed by the said Helm and the said Raily, as above described, and other notes of theirs, sufficient to make up the amount necessary to pay the said two notes of $19,869 95, were, subsequently, on or about the 18th of March, 1842, in pursuance of this agreement and understanding, discounted on the application of the said Stanton, in the said Planters' Bank, and the proceeds paid on the checks of said Raily and Helm, in discharge of said two last above described notes of $19,869 95. And your orator shows that this arrangement was then made and carried out, as above stated, by the said Buckner, in contemplation of bankruptcy, in fraud of said act, and for the purpose of giving priority and preference to said Raily and Helm over the general creditors of Stanton, Buckner & Co., to the extent of the amounts of said notes executed by them to the said Planters' Bank, first for the Julia street property, amounting to $10,700, and for the Lafayette property, amounting to $14,666 66⅔.

But your orator further shows unto your honor, that this was done with the full approbation and consent of the said Frederick Stanton, then in contemplation of bankruptcy, in fraud of said act, and for the purpose of giving priority and preference, as aforesaid, to the said Helm and Raily, and in pursuance of the understanding aforesaid between the said Buckner and himself to that effect; and accordingly your orator shows, that on the 18th March, 1842, the said Frederick Stanton, by way of consummating this preference in favor of said Helm and Raily,

presented in said Planters' Bank the checks of said Raily and Helm for the amount before that time discounted on his said application to said bank, and had the same applied to the of said two notes for $19,869 $\frac{25}{100}$, on which said Raily and Helm were the first endorsers.

Your orator further shows unto your honor, that the said Planters' Bank discounted the said notes of Raily and Helm, on the condition that the proceeds of said discount should be applied to the payment of the said last two discounted notes of Stanton, Buckner & Co. Your orator further shows, that, in pursuance of this artful scheme to prefer the said Raily and Helm, the said Stanton acted as the agent of the said Helm and Raily, in presenting and obtaining from said bank the discount of their said notes; and your orator shows that said Stanton obtained said discounts from said bank for said Raily and Helm, on the condition that the proceeds should be applied to the payment of the aforesaid two notes of Stanton, Buckner & Co., each for $19,868 45, on which said Raily and Helm were the first drawers; all of which said sale and transfers and proceedings connected therewith were made and done by the said Buckner and said Stanton in fraud of said act of Congress, in contemplation of their said bankruptcy, and for the purpose of giving the said Raily and the said John N. Helm a priority and preference over the general creditors of said Stanton, Buckner & Co.

But your orator shows further unto your honor, that he is informed and believes that the said sale and transfer of the said Julia street and Lafayette property, made as aforesaid by the said Buckner, with the knowledge and approbation of said Stanton, in fraud as aforesaid, in contemplation of bankruptcy, and for the purposes aforesaid, to give preference and priority to the said Raily and the said Helm, the brothers-in-law of the said Stanton, was made for the purpose of retaining an advantage and profit to the said Buckner out of said property, in fraud of the creditors of him, the said Buckner; and your orator charges that it was understood and arranged by the said Buckner, and the said Raily and Helm, before the said sale and transfer, that the said Buckner should have the privilege of redeeming the said property, or some portion thereof, by paying to said Planters' Bank the notes of said Raily and Helm given for the same, and also re-imbursing to them the amount which they were to advance on said pretended sale and transfer, which your orator charges to be fraudulent as to the general creditors of said Buckner.

And your orator shows in evidence of this, that the said Buckner never in fact parted with the possession of said Lafayette property, but retained the same under a pretended agency for the said Raily and Helm, but they retaining the titles as a security for the said notes to the Planters' Bank, and for the payment assumed by them on account of the purchase of said property; and accordingly your orator shows that immediately after the discharge of said Buckner in bankruptcy, the said Raily and Helm made a release to said Buckner, but which your

orator charges was but a consummation of the said previous arrangement and understanding with him, and the rents which had accrued on said property were relinquished to said Buckner, he only agreeing to take up the engagements given and outstanding for said property.

Your orator shows and charges, that though said Lafayette property was really worth at the time greatly more than the said sum of $18,000, for which said sale and transfer was made, yet the sum of $14,666 66⅔ of that sum was payable in the Planters' Bank in one, two, three, and four years after said sale; and your orator further shows, that at the time of said sale, and ever after that time, the bills and notes of said Planters' Bank in which said notes were payable, were worth not more than forty cents on the dollar; thus reducing the actual amount which said Buckner, who ultimately paid said notes for said property to said bank, less than half the nominal sum, and enabling him without ever parting with the possession of said property, or paying any rent therefor, by simply placing the titles in Raily and Helm as security for their said indebtedness, to realize a splendid speculation, and defraud his general creditors of their rights to have said property honestly appropriated to the payment of his debts.

Your orator further charges, that in fact the said arrangement was made expressly for the purpose of giving a priority and preference to said Raily and Helm as aforesaid, and to secure the said Buckner the ultimate enjoyment of said property in fraud of said act, in contemplation of bankruptcy, and with the consent and knowledge of said Stanton, also in contemplation of bankruptcy, in fraud of said act, and for the purposes aforesaid.

Your orator further shows, that the said Buckner did, for a short time, part with the possession of said Julia street property, but within a few months afterwards went again into possession of said Julia street property, under some pretended agency for said Helm and Raily, and from that time received the rents of said property for which he did not render, and was not required to render, any account to said Raily and Helm, but used the same, together with the rents accruing on said property, before he went into possession under said pretended agency, which your orator charges was permitted by said Raily and Helm to go into his hands in paying off the said Planters' Bank debt.

Your orator shows that said Raily and Helm, in 1846, made a sale of said property to one Blood, through the pretended agency of *of* said Buckner, for the pretended purpose of paying off the balance of the debt, which had been contracted in the Planters' Bank for said property, but your orator shows that this was in fact but a sale made by Buckner for his own benefit, and that he realized from it the advantages contemplated in his original understanding with said Raily and Helm, when, as your orator is informed and believes, the said Raily and Helm, although the pretended owners of said Julia street property for a period of five years or more, never received one cent from the same, but the said Buckner received all the rents and profits of the same, together with the amount which the said Blood paid for the same,

only on condition and for the purpose of paying the said notes for $10,700, which had been executed by the said Raily and Helm to the Planters' Bank, in the purchase of said property as aforesaid from said Buckner.

But your orator shows that the whole amount of said notes and interest, when paid, did not exceed, nominally, the amount of about $12,000, which was about the sum received by said Buckner in good money for the said rents and sale of said property to said Blood, while he was able to pay said note in Planters' Bank money, which, as your orator is advised, from the time of said original sale and transfer up to the final extinction of said notes, did not exceed forty cents on the dollar. Your orator charges, upon the above facts, that the transactions, transfers, sales, agreements, &c., in regard both to the said Lafayette and Julia street property, were made and done by the said Buckner with the said Raily and Helm, in contemplation of his bankruptcy, and that of the firms of which he was a member, and of said Stanton, in fraud of said act of Congress, for the purpose of giving the priorities and preferences aforesaid to the said Raily and Helm, and for the purpose of securing to himself an advantage and profit out of said property, and not honestly subjecting it in good faith to the payment of his debts; and that all this was done with the knowledge and assent of said Stanton, and under their previous understanding to go into bankruptcy, and in contemplation thereof by said Stanton, for the purpose on his part of giving the priorities and preferences aforesaid to said Raily and Helm, in fraud of said act of Congress, and of the rights of the creditors of said Buckner, and Buckner, Stanton & Co.

Your orator further shows unto your honor, by way of more particular specification, that on the 7th day of July, in the year 1842, the said firm of Buckner, Stanton & Co. were indebted to one Martin Burke, in a sum money, the amount of which your orator is unable to state, and that on that day, a few days before the respective applications of said Buckner and said Stanton to be declared bankrupts, in contemplation of bankruptcy, knowing themselves and said firms to be insolvent, in fraud of said act of Congress, and for the purpose of giving priority and preference to said Burke over the general creditors of said Buckner, Stanton & Co., the said Buckner, for and on behalf of said Buckner, Stanton & Co., paid to the said Burke the sum of $1,044 49; and your orator charges that this payment and preference in favor of the said Burke was done and made by said firm in pursuance of the previous understanding and arrangement between said Buckner and Stanton to go into bankruptcy, and to prepare therefor by making certain preferences.

Your orator shows, by way of more particular specification, that on the 8th of July, A. D. 1842, the said firm of Buckner, Stanton & Co., being indebted to one Bryant, in a sum the exact amount of which your orator cannot state, and that on said 8th day of July, in contemplation of bankruptcy by the said Buckner and said Stanton, in fraud of said act of Congress, and to give a preference and priority to said

Bryant over the general creditors of said Buckner, Stanton & Co., the said Buckner and said firm paid to the said Bryant on their said indebtedness the sum of $542 88; and your orator charges that this payment was made in pursuance of the previous understanding between the said Buckner and Stanton to go into bankruptcy, and to prepare therefor by making certain arrangements which would give priority to some particular and favored friends over their general creditors.

Your orator further shows unto your honor, that on the said 8th day of July, 1842, the said firm of Buckner, Stanton & Co., being indebted to one L. C. Duncan, in a sum the exact amount of which your orator is not able to state, the said Buckner and said Stanton, and said firm of Buckner, Stanton & Co., in contemplation of bankruptcy, in fraud of said act of Congress, with intent to give priority and preference to said Duncan over their general creditors, paid to the said Duncan the sum of about $1,387, more or less; and your orator charges that this was done in pursuance of said previous arrangement and agreement between the said Buckner and the said Stanton, and in fraud of said act of Congress.

Your orator further shows unto your honor, that on the said 8th day of July, A. D. 1842, the said firm of Buckner, Stanton & Co., being indebted to one Joseph Sill, in a sum the exact amount of which your orator is unable to state, the said Buckner and said Stanton, and said firm, in contemplation of bankruptcy, in fraud of said act of Congress, and in order to give priority and preference to said Sill over the general creditors of said firms, and of said Buckner and said Stanton, paid to the said Sill the sum of $1,497 07; and your orator charges that said payment was thus made in pursuance of said previous arrangement and understanding between said Stanton and said Buckner, as above shown, and in fraud of said act.

Your orator further shows unto your honor, that on the said 8th day of July, 1842, the said Buckner and said Stanton, and said firm of Buckner, Stanton & Co., in contemplation of bankruptcy, in fraud of said act of Congress, and in order to give said Joseph Sill a priority and preference over the general creditors of said firm, and for the further purpose of concealing for their own benefit, transferred to said Sill certain unsettled balances of accounts due from various persons to said firm of Buckner, Stanton & Co., to wit: balance of account against G. C. Brandon, amounting to $221 76; balance of account against John L. Fisher, due to said Buckner, Stanton & Co., amounting to $437 58; balance of account Dent H. Miles, due said firm of Buckner, Stanton & Co., amounting to $415 59; balance of account against J. A. McPheters, due said firm, amounting to $666 98; balance of account against M. W. Ewing, due said firm, amounting to $249 54; balance of account against Jesse Newton & Co., due said firm, amounting to $799 79; and balance of account against A. W. Hutchins, due said firm, amounting to $824; amounting in all to about $3,520 14; all of which said accounts were good.

Your orator, for want of information, cannot state positively for what

purpose said transfers were made; but he charges, from his belief and information, that said transfers were made to secure said Sill in whatever balance might be due him over and above the cash payment already shown to have been made to said Sill, on an indebtedness which could not have fallen due until August 31, 1842, after their applications for bankruptcy. Your orator charges this upon the entry made in the books of said Buckner, Stanton & Co., of an indebtedness due to said Sill, on said 31st August, 1842, for about $2,500.

Your orator shows and charges, that for whatever purpose said transfers were made to said Sill, the said balance of account were cancelled, and not placed in the inventory of the assets of said Buckner, Stanton & Co., either of the said Buckner or the said Stanton; all of which was done in contemplation of bankruptcy, in fraud of said act and of their creditors, and was done to secure an ultimate advantage to said Stanton and said Buckner, and in fraud of said act.

Your orator shows unto your honor, that all of said payments, preferences, and transfers as aforesaid to said Bryant, said Duncan, said Burke, and said Sill, will more fully and at large appear from the books of said firm of Buckner, Stanton & Co., for the year 1842; your orator therefore prays that said defendants be required to produce the same in court, if the allegations hereinbefore stated are denied.

Your orator would further show unto your honor, by way of more particular specification, that he is informed and believes, and so charges the fact to be, that a short time prior to the filing of the said petitions by the said Stanton and the said Buckner, in said district courts as aforesaid, the said firm of Stanton, Buckner & Co. were indebted to one Pipes in a large amount, and that William M Helm, the brother-in-law of said Stanton as aforesaid, was indebted in a large amount to said firm of Stanton, Buckner & Co., but the exact amount of which said sums of indebtedness, respectively, your orator is unable to state, by reason of said Stanton having as aforesaid obtained the possession of said books of Stanton, Buckner & Co.

But now so it is, may it please your honor, your orator is informed and believes, and so charges the fact to be, that the said Stanton and the said Buckner, in contemplation of their respective bankruptcies, in fraud of said act, and for the purpose of giving the said Pipes a preference and priority over the general creditors of said firm of Stanton, Buckner & Co., and a preference over their individual creditors respectively, with a full knowledge of their utter and hopeless insolvency, and that of said firms, after a mutual understanding and agreement made and had for that purpose through the said Stanton, by and between all of said parties, that the said Pipes was to be the creditor of said Wm. M. Helm instead of the firm of Stanton, Buckner & Co., to the amount of the said indebtedness of said Helm to said Stanton, Buckner & Co., did charge, by said Stanton, the said Pipes, on the books of Stanton, Buckner & Co., with the amount of the said debts due and owing from the said William M. Helm to the said Stanton, Buckner & Co., and did credit the said Wm. M. Helm on said books of Stanton,

Buckner & Co., for the corresponding amount of the charge made as aforesaid against said Pipes; all of which your orator charges was in fraud of the just rights of creditors, and of said act of Congress, and was done by said Stanton with the knowledge and approbation of the same on the part of said Buckner, and in pursuance of said understanding by and between said Stanton and said Buckner as aforesaid, and for the purposes aforesaid, in contemplation of bankruptcy as aforesaid.

Your orator would further show unto your honor, that if mistaken in charging the aforesaid transaction and arrangement as a payment, preference and priority as aforesaid to the said Pipes over the general creditors of Stanton, Buckner & Co., and the individual creditors of said Stanton and said Buckner, then your orator charges, that the said arrangement in relation to the said indebtedness of said Stanton, Buckner & Co., to said Pipes, and the said indebtedness of the said Wm. M. Helm to the said firm of Stanton, Buckner & Co., was made by the said Stanton in contemplation of bankruptcy, in fraud of said act, with a full knowledge of the same on the part of said Buckner, and in pursuance of said *and* understanding by and between said Stanton and said Buckner as aforesaid, in relation to their respective applications for the benefit of said act, for the purpose of giving the said Pipes a security for his said debts over the general creditors of said firm of Stanton, Buckner & Co., in fraud of said act, and for the further purpose of fraudulently depriving the general creditors of Stanton, Buckner & Co. of their just rights, by charging the said Pipes as aforesaid, and by giving credit to said Wm. M. Helm as aforesaid; all of which your orator charges was in fraud of said act of Congress, and of the just rights of creditors.

And your orator further shows unto your honor, that the said Stanton and the said Buckner both did, knowingly, wilfully, and in fraud of said act of Congress and the just rights of creditors, omit the name and amount of the said indebtedness of the said Wm. M. Helm to said Stanton, Buckner & Co., from their respective inventories of the assetts of Stanton, Buckner & Co., filed with their said petitions as aforesaid, and cancelled the same

And your orator further shows unto your honor, that the said Stanton and the said Buckner both did, knowingly, wilfully, and in fraud of the said act and of the just rights of creditors, omit the name and amount of the said indebtedness of said Stanton, Buckner & Co., to the said Pipes from their respective schedules of indebtedness as individuals, and as members of the firm of Stanton, Buckner & Co., and filed with their said petition as aforesaid.

And your orator further shows unto your honor, that in the latter part of the year 1842 the said Stanton and the said Buckner formed a new partnership in the commercial business, under the name and style of Stanton & Buckner, at Natchez, in the State of Mississippi, and of Buckner & Stanton, in New Orleans, in the State of Louisiana; and that shortly after the formation of said firms as last aforesaid, said Pipes was credited on the books of said firm of Stanton & Buckner with the

amount of the original indebtedness of Stanton, Buckner & Co. to said Pipes, and the said Wm. M. Helm was charged on the books of said firm of Stanton & Buckner with the amount of his original indebtedness to said firm of Stanton, Buckner & Co.; all of which actings and doings, in fraud of said act of Congress and the just rights of creditors, your orator charges will more fully and at large appear in and from the books of said firms of Stanton, Buckner & Co., for the year 1842, and from the books of said new firm of Stanton & Buckner, and Buckner and Stanton, for the years 1842 and 1843, which your orator prays the said defendants may be required to produce in court, if the allegations hereinbefore stated as aforesaid are denied; all of which said books are in the possession of said defendants.

And your orator further shows unto your honor, that by reason of the said books of said firms of Stanton, Buckner & Co., Buckner & Stanton, and Stanton & Buckner, being in the possession of said defendants, your orator is not able to make more and other specific charges of the divers fraudulent concealments, preferences, priorities, payments, transfers of property, charges, and credits made and entered on and in the said books of Stanton, Buckner & Co., by the said Stanton, in contemplation of bankruptcy, in fraud of said act and of the just rights of creditors, with a full knowledge and approbation on the part of said Buckner, in contemplation of bankruptcy, and in pursuance of their said understanding and agreement in relation to their applying for the benefit of said act; but now so it is, may it please your honor, your orator is advised and believes, and so charges the fact to be, that the said Stanton, in contemplation of bankruptcy, in fraud of said act and of the just rights of creditors, with a full knowledge and approbation of the same on the part of said Buckner in contemplation of bankruptcy, and in pursuance of their said agreement and understanding in relation to applying for the benefit of said act, did make divers fraudulent entries, charges, credits, preferences, transfers, and concealments of property on and in the said books of Stanton, Buckner & Co., and said Stanton & Buckner, for the purpose of giving priority and preference to certain particular friends and relations over the general creditors of Stanton, Buckner & Co., and also for the further purpose of securing a large amount of money, notes, bills, and accounts due said firm of Stanton, Buckner & Co., to the use and benefit of him the said Stanton, and the said Buckner, and thereby did fraudulently deprive the general creditors of Stanton, Buckner & Co. of their just rights, and all of which was in fraud of said act of Congress.

And your orator further shows unto your honor, that he is informed and believes, and so charges the fact to be, that the said Stanton and the said Buckner, in contemplation of bankruptcy, and in fraud of said act of Congress, for the purpose of giving priority and preference to certain favored creditors of Stanton, Buckner & Co., over the general creditors of Stanton, Buckner & Co., but whose names your orator is unable to state, and for the further purpose of securing and retaining to their new firms of Stanton & Buckner and Buck-

ner & Stanton, which they then intended to establish after their respective applications for the benefit of said act, the custom of said favored persons, and for the further purpose of retaining to said new firm a portion of the assetts of said Stanton, Buckner & Co., in fraud of said act of Congress, and of the just rights of the creditors of said Stanton, Buckner & Co., did assign and transfer a large amount of the commercial paper and book accounts against various persons, and to said firm of Stanton, Buckner & Co., to said favored persons, creditors as aforesaid, for the purposes aforesaid, and that the accounts of said favored persons, creditors as aforesaid, and the said persons indebted on said commercial paper and said book accounts, were balanced and paid accordingly by said transfers, by the said Stanton, Buckner & Co., and all of which your orator charges will more fully appear by reference to said books of said Stanton, Buckner & Co. for the year 1842, and which your orator prays the said defendants may be required to produce if the allegations hereinbefore stated are denied.

Your orator further shows unto your honor, that the said Oakey, and the said Montgomery, and the said Boyd, had no notice whatever, nor did either one of them at any time, of the frauds, devices, combinations, priorities, preferences, transfers, securities, arrangements, and concealments, made, done, and given as above stated by said Stanton and said Buckner, in fraud of said act of Congress, and of the rights of their creditors, but, on the contrary, were in entire ignorance of the same until within eighteen months now last past, within which said last-mentioned period of time they, and each of them, have discovered the same.

And your orator further shows, that the said frauds, devices, combinations, priorities, preferences, transfers, securities, arrangements, and concealments, make utterly null and void as against your orator, or the said Oakey, and the said Boyd, and the said Montgomery, and each of them, the said decree of discharge, and certificate thereof of the said district courts in favor of the said Stanton and the said Buckner.

And your orator further showeth, that your orator had no notice whatever, at any time, of the said frauds, devices, combinations, priorities, preferences, transfers, securities, arrangements, or concealments, but, on the contrary, was in entire ignorance of the same until within the eighteen months now last past, within which last-mentioned period of time your orator has discovered the same.

Your orator further showeth unto your honor, that neither your orator, nor the said Oakey, nor the said Montgomery, nor the said Boyd, had at any time any knowledge or notice whatever of any fact or facts calculated to put either of them upon inquiry in relation to said frauds, devices, combinations, priorities, preferences, transfers, securities, arrangements, or concealments, until within eighteen months now last past.

Your orator further showeth, that said Oakey, and said Montgomery, and said Boyd, not having any notice of the same, and of said frauds, and supposing and believing that the said Stanton and said Buckner had honestly and faithfully complied with all the requirements of said act of Congress, and had thus legally and properly ob-

tained their respective discharges and certificates as aforesaid, from all their liabilities of every nature and description, and had thus, as your orator is advised and believes would have been the effect of said discharge and certificate had they been honestly and legally obtained, ceased to be the debtors of said Oakey, and of the said Montgomery and Boyd, each and all of them were lulled into a false security and confidence, believing that they, and each of them, had no claim against said defendants, or either of them, and so did not proceed to enforce their said claims against them, either at law or in equity.

Your orator further showeth, that within the eighteen months now last past, both the said Oakey, and the said Montgomery and Boyd, and your orator, have used all diligence and every effort in their power to ferret out the said frauds, devices, combinations, priorities, preferences, transfers, securities, arrangements, and concealments, and your orator states the fact to be, that by reason of the said frauds, devices, combinations, priorities, preferences, transfers, arrangements, securities, and combinations, as hereinbefore stated, practised and done, and given by said defendants upon said act, and the discovery of the same within the eighteen months last past as aforesaid, by your orator, and the said Oakey, and the said Montgomery and Boyd, and their diligence as hereinbefore stated, the said decrees of the said district courts in Mississippi and Louisiana, purporting to discharge the said defendants from all their liabilities of every nature whatsoever, and the certificates thereof granted to the said defendants by said district courts, are utterly null and void, and of no force and validity whatsoever as against the rights of your orator.

Your orator further shows unto your honor, that there is still due and owing by the said Stanton and said Buckner to your orator, Calcote, on said claims purchased as aforesaid by said Oakey, and assigned as aforesaid by him to your orator, Calcote, the full sum (if not more) of six hundred and forty thousand dollars as principal, with interest on the same, at the rate of six per centum per annum, from the first day of August, A. D. 1842, making in all, as principal and interest on said claims, as assigned by said Oakey, up to the time of filing this his bill of complaint, the sum of one million and eighty-four thousand eight hundred dollars and twenty-five cents. And your orator further showeth unto your honor, that there is still due and owing on the said claim, assigned as aforesaid, by the said Montgomery and Boyd, to your orator, the full sum of twelve hundred and thirty-eight dollars four cents principal, with interest on the same at six per centum per annum, from the 21st July, 1842, up to the time of filing this bill of complaint, making principal and interest on said last claim, assigned as aforesaid, the sum of two thousand one hundred and twelve dollars.

The premises considered, your orator prays, that the said Frederick Stanton, of the city of Natchez, county of Adams, and State of Mississippi, and the said Henry S. Buckner, of the city of New Orleans, and State of Louisiana, be made defendants to this bill of complaint, and compelled to answer under oath the several allegations thereof, and to

that end that due process of subpœna may issue against the said Frederick Stanton, and to that end that an order of publication according to law be made against the said Henry S. Buckner.

And your orator further prays, the premises considered, that the decree of the said district courts in said States of Louisiana and Mississippi, purporting to discharge the said Stanton and the said Buckner from all their debts and engagements, of every nature whatsoever, and the certificates thereof, granted by said district courts to the said Stanton and said Buckner, be adjudged and decreed to be void, and of no validity whatsoever, as far as the rights of your orator, as set forth in this bill, are, or may be, affected by the same; and that the said defendants be perpetually enjoined from setting up said discharges, and the certificates thereof, granted to them by said district courts, as against the rights of your orator, as above set forth in this his bill of complaint.

And your orator further prays, the premises considered, that the said Stanton and the said Buckner be enjoined and decreed to pay unto your orator, Calcote, the sum of one million and eighty-six thousand nine hundred and twelve dollars and twenty-five cents, with such further sum, by way of interest as aforesaid, as may accrue on said principal debt of six hundred and forty thousand dollars, and twelve hundred and thirty-eight dollars and twenty-five cents, after the filing of this his said bill of complaint, together with all such costs and damages as may accrue unto your orator; or, if mistaken in the relief prayed for, to grant such other further and general relief unto your orator, the premises considered, as unto your honor may seem meet and proper; and as in duty bound, will ever pray, &c.

WILLIAM YERGER, *Sol.*
FULTON ANDERSON, *Sol.*
L. MADISON DAY, *Sol.*
SAMUEL S. BOYD, *Sol.*

STATE OF MISSISSIPPI,
Hinds county.

This day personally appeared before the undersigned commissioner in chancery, James L. Calcote, and made oath that the matters and things stated in his foregoing bill, as stated on his own knowledge, are true, and those stated on information derived from others he believes to be true.

JAS. L. CALCOTE.

Sworn to and subscribed before me, Mar. 25th, 1852.
L. MIMS, *Com'r in Chancery.*

Bill and Exhibits A, B and C, filed, and spa. iss'd, March 28th, '54.

SIMMS, *Cl'k.*

Exhibit A to Bill.

On the same day the following Exhibit A to bill of complaint was filed, to wit:

NATCHEZ, *Aug. 25th*, 1842.

STEPHEN DUNCAN, ESQ.

D'R SIR:—I this morning received your esteemed letter of 6th inst. In reply thereto: It is true that Mr. Buckner and myself have taken the benefit of the bankrupt law; we were compelled to this course by the number of executions that were out against us on our endorsement liabilities One against the house here, or rather against me as a member of, on a note of Silas Lillard and others, held by the Bank of Kentucky, at Louisville, for over $9,000, that has been returned to the Nov'r term of our court "*Nulla bona*," was sent to New Orleans in June, with positive instructions to attach my interest in the house there; other judgments had been obtained against Mr. Buckner about the time court closed, (1st July,) principally on endorsements for Brander, McKenner & Wright, amounting in all to about $36,000, on which executions would issue as soon as business fairly commences this fall, which it would be impossible for us to satisfy, and if nothing else, would harass Mr. Buckner beyond measure, most likely force him to make a surrender, which would, were it to occur in the business, virtually ruin us.

Therefore, after due reflection, after weighing well all the consequences likely to follow, (first consulting our particular friends,) we came to the conclusion to adopt the course we have, mortifying and humiliating as it was, with the distinct understanding, however, betwixt us, that every dollar we make shall be applied to the payment of all debts we are morally bound to pay, more particularly those where our friends are involved for us.

And those on which your name appears are the principal of this character. On consulting Mr. Buckner in relation to them, both he and I were of opinion, that unless our business fell off materially, in consequence of the step we were about to take, and I have now every reason to believe it will not, as all our friends who I have seen approve the act, and express *the* confidence in our honesty and integrity, deeming us more safe now than before,) we shall be able to meet the calls that may be made on those notes at maturity, without permitting our endorsers to advance a cent, and I assure you all our energies shall be pressed to that point, under all circumstances. I cannot, of course, be expected to say positively that you will not be called upon to advance some portion, but I think I can fairly infer that you will not be; though, to preserve your security on my town property, it may, and no doubt will be necessary, that you should be the prominent party in taking up those notes, to which end some plan must be fallen upon to have this done, which, I presume, will be in season on your return home, as an assignee of our estate will not be appointed before the

Nov'r term of the U. S. circuit court, as Judge Gholson seems determined to do nothing out of term time in this district. I hope the above will relieve your mind, so far as you are concerned, as endorser for us. My two notes you hold as adm'r of the estate of J. Linton, and secured by deed of trust on the property on which I reside, and I am confident there is no judgment against me, obtained prior to giving it; indeed, it is included in the same deed of trust I gave Col. Bingaman to secure him in the payment of the purchase-money, and bears even date with his deed to me for the property, and were left in the office together for record. When I named to you that my note to Col. Bingaman for purchase-money was raised or paid, I was under the impression that the balance he was due Stanton, B. & Co. would cover it; but, on making off this account, I found it would not, by about $2,000; so that the property is still subject to this, and a note of mine held by Mrs. Magt. Smith for $4,400, embraced in same deed of trust, and also a prior lien to that of estate of J. Linton; the property, however, ought to be ample security for the whole.

In making up my schedule for court, I was particular to set forth fully the various sums each piece or portion of property was under mortgage for, so that there might be no misapprehension on the part of my creditors, or that of the assignee, into whose hands it might fall. In making my surrender, I included every debt due to, and every particle of property, joint or individual, we were possessed of on earth, without so much as suggesting to any one a desire to retain a single portion of it; nor have I yet, leaving that a matter for future consideration, having made up my mind to patiently abide the result, be it what it may, feeling thoroughly convinced that to struggle longer was altogether vain, and *we ever* could save harmless those involved for us, it was to pursue the course we did, and are now well satisfied with the correctness of our conclusion.

In my whole course, unfortunate as it has been, I can only claim an honesty of intention throughout; and if, after perusal of the explanation I have here given, I learn that you approve of what we have done, I shall feel more than gratified; for I assure you, in all truth and candor, there are few men whose good opinion I prize more highly than I do yours.

During the past and present months we have had an unusually wet and cool season, cutting short very materially the flattering prospects we previously had of a large cotton crop. I returned a few days ago from Yazoo, where I spent a week, and saw a number of cotton crops, and none that could be considered better than an average appearance. The reports there, as well as from the neighborhood, particularly the river, induces me to believe that the crop will be a medium one, and not more.

Very truly, yours, &c.,
FRED. STANTON.

Copy.—Filed March 28, '54.

SIMMS, *Clerk*.

Exhibit B to Bill.

Filed same day the enclosed Exhibit, in words and figures therein, to wit:

Notes discounted for Stanton, Buckner & Co. by Commercial Bank of Natchez, and applied to their credit.

No.	For whose acc.	Endorser.		Drawers.	When drawn.	Maturity.	Amount.	Nett pro's.
3694	Stanton, B. & Co.	Stanton, B. & Co.		Js. Dunbar	May 18, 1842.	1|4 Jan'y, 1843	$575 44	$550 08
3695	do	do		D. H. Cooper and W. M. Wood	Mar. 19, 1842.	19|22 " "	2,248 09	2,141 17
3696	do	S. B. Newman	Stanton, B. & Co.	Jno. S. Moseby, F. Davis	Jan'y 4, 1842.	15|18 Feb. "	1,879 20	1,780 10
3697	do	Stanton, B. & Co.	Secured by deed of trust	J. S. Jeffries	Oct. 18, 1841.	1|4 Jan'y, "	4,101 84	3,920 90
3698	do	do	Secured by mortgage.	Jos. Boazman, Wm. Roberts, and Asa Robinson	Feb'y 14, 1842.	1|4 Mar. 1843	4,390 98	4,147 61
3699	do	do	do	do	" "	1|4 " 1844	4 390 98	3,761 57
3700	do	do	do	do	" "	1|4 " 1845	4,390 98	3.589 35
3701	do	do	do	do	" "	1|4 " 1846	4,390 98	3,369 03
			Discounted	May 19, 1842.				$23.259 81
3702	Stanton, B. & Co.	Stanton, B. & Co.		James Cummings and Caleb Stowers	May 20, 1842.	20|23 Dec. 1842	$638 00	$612 30
3703	do	do		Ann W. Winston, D Stanton	May 16, "	15|18 Feb. 1843	4,098 98	3,888 31
			Discounted	May 26, 1842.				$4,500 61

Stanton, Buckner & Co. checked for pro's of the above disc'ts on the days of date, say 19th and 26th May, '42; which checks were to take up the notes Nos. 2,982 and 3,007, as described opposite.

[Rec. clv, D. T., 1855.]—5

Calcote vs. Stanton et al.

3396
23

Protested notes of Stanton, B. & Co., taken up in May, 1842.

{This note disc'd for Stanton, B. & Co., and pros. applied to their cr., January 28, 1839.}	A note drawn by Stanton, B. & Co., dated January 26th, 1839, at 12 mo. acc., endorsed by A. L. Bingaman, Wm. M. Helm, and John N. Helm, No. 2,982, due 26|29 Jan'y, 1840 - - - - -	$15,228 00	
	Protest - - - - -	3 50	
	May 19, 1842.—Interest thereon -	2,772 98	
			$18,005 48
	Cr.		
	1842, May 16.—Payment on acc. principal - - - - -	$7,619 96	
	1842, May 19.—Payment on acc. principal - - - - -	7,608 04	
	1842, May 19.—Payment int. and protest - - - - -	2,777 48	
		$18,005 48	
{This note was disc'd for Stanton, Buckner & Co., and pros. applied to their cr., February 5, 1839.}	A note drawn by Stanton, B. & Co., dated January 30, 1839, at 12 mo. acc., endorsed by Girard C. Brandon and Wm. M. Helm, No. 3,007, due February 2, 1840, for - - -	$14,702 74	
	Protest - - - - -	3 50	
	1842, May 26.—Interest thereon -	2,665 45	
			$17,371 69
	Cr.		
	1842, May 19.—Payment on acc. principal - - - - -	$12,878 62	
	1842, May 26.—Payment on acc. principal - - - - -	1,824 12	
	1842, May 26.—Payment int. and protest - - - - -	2,668 95	
		$17,371 69	
	Amount paid on above, May 16, 1842	$7,619 96	
	Do. do. do. do. 19, "	23,264 14	
	Do. do. do. do. 26, "	4,493 07	
	Total principal and interest - -	$35,377 17	

Exhibit C to bill.

On the same day the following Exhibit C was filed, to wit:

NATCHEZ, *Sep't 14th*, 1842.

STEPHEN DUNCAN, ESQ.

DEAR SIR: On the 12th inst. I rec'd your letter of the 25th ult'o; on same day I (25 Aug't) wrote you in full, in reply to your letter of 6th ult'o, relative to the business on which you again address me, and which, I trust, you received some time since, as I sent it to New Orleans, to be there mailed, that as little time might be lost as possible in reaching you, and that it had the effect I hoped it would have in relieving your mind in regard to your responsibilities for us.

I frankly confess I ought to have informed you, at once, of the steps we had taken; had you been here I certainly would have consulted you, among the first of my friends, but I felt so much mortification, and so humiliated when it came to the point, when action was necessary, that really I had not spirit to do anything, though I frequently thought I would address you, but, under the feelings which I had, put it off, from day to day, till aroused by your first letter; meantime I had to visit Jackson to file my petition.

A few days after, Mr. Buckner and myself formed a new partnership, when I thought it necessary to take a trip to Yazoo, and visit a number of our old friends there, which took two weeks, and I believe was the means of retaining the *the* business of the most valuable portion of them, which we might otherwise have lost; these are the only apology I have to offer for my apparent neglect, and I trust never again to have to pass through such an ordeal.

I annex a list of the notes your name is upon, with their respective maturity.

The first is that held by the Bank of the U. S., on which suit was brought last spring, which resulted in a judgment against us, in consequence of not having the notes of the bank, as tendered, in court, which the court decided was necessary, though L. C. Duncan, who was our counsel, did not consider this necessary. Mr. Buckner yet feels confident that the U. S. notes will be accepted this fall. The second, due 11th December next, held by Jno. Knight, as collateral for $5,000, he left with us last spring, and I can safely say will never trouble you. That due 18th December next, held by L. C. Duncan, was given him as collateral, to hold him harmless on an appeal bond, on which he went for the house on a judgment against Mr. Buckner for the house of $2,000, which Mr. Duncan advised an appeal taken upon, as both he and Mr. B. thought it unjust, and contrary to law, and feel sanguine that it will be reversed by the superior court; so I feel strongly in hopes that it is only a nominal matter.

I am not sure that I am correct as to the other two being held as I state; that is, that I place them right. It may be that Jacobs holds the $4,200, and the Bank of Louisiana (Union) holds the $4,800, but they are the holders; the one Jacobs holds was transferred to him by

the Merchant's Bank, where we had it discounted. There was one other, I think, originally disc't in Com'l Bank of N. Orleans, for $4,200, which Mr. Buckner, at the time her money was so low, paid, *being* enabled to pay up the am't for a little over $1,800, in good money.

I really regret that our business should have caused you so much uneasiness, but trust that the receipt of this (if my former did not) will put your mind at rest, as I again assure that it is not our intention to let any of our friends suffer, while it is my belief we can save them harmless, as I now feel satisfied our business will fall off very little, if any, in consequence of our taking the bankrupt law. We have had a most unfavorable season, so far, for picking cotton. It now is, and has been, raining for four days, accompanied with high winds, without, as yet, the least appearance of clearing off.

During ten days previous, we had hot, dry weather, which caused an unusual quantity of cotton to open, that I now much fear * * * * * * * * * * the field, at all events, mu * * * * * * * * * so that *fine cotton* will be scarce * * this season from all that I can learn from the * * section of our State and Louisiana; we will not (as stated in my last) make exceeding a medium crop, or barely an average one.

Most respectfully, &c.,

FRED. STANTON.

(Copy.)

Time due.

February 7, 1842, held Bank of U. States - - -	$6,500
December 11, 1842, held by Jno. Knight, as collateral	6,000
December 18, 1842, held by L. C. Duncan as collateral	2,500
December 27, 1842, held by Union Bank of Louisiana	4,200
Ja'y 6, 1843, held by M. Jacobs - - - -	4,800
	$24,000

Addressed to STEPHEN DUNCAN, esq'r,
Care Messrs. JACKSON, TODD & Co.,
Philadelphia, Pa.

[Mail.]

Filed March 28, '54.

SIMMS.

Subpœna.

On the same day the following subpœna was issued, to wit:

THE STATE OF MISSISSIPPI,

Superior court of chancery of the State of Mississippi, to wit:

To Henry S. Buckner, greeting:

For certain causes offered before us in our superior court of chancery of the State of Mississippi, we command and strictly enjoin you, that

laying all other matters aside, and notwithstanding any excuse, you personally appear at a superior court of chancery to be holden at the court-room, in the city of Jackson, on the first Monday in June next ensuing, to answer a bill of complaint exhibited against you and F'red. Stanton, by James L. Calcote, complainant in our said court, and further to do and receive what our said court shall have considered of this behalf; and this you shall in no wise omit, under the penalty of one hundred dollars, as well as the consequences that may fall thereon; and have then and there this writ.

Witness the honorable Charles Scott, chancellor of the State of Mississippi, at the city of Jackson, the 1st Monday in March, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-four, and in the year of the sovereignty and independence of the United States of America the 77th.

Issued the 28th day of March, 1854.

J. T. SIMMS, *Clk.*

To HORACE KEATING, Commissioner for the State of Mississippi, residing in New Orleans, La., to execute and return.

Upon the back of which s'pa is the following by the clerk:

This bill is filed to set aside your discharge in bankruptcy, and for the recovery of money to the am't of one million and eighty-six thousand nine hundred and twelve dollars and 25 cents, with all costs and interest.

J. T. SIMMS, *Clk.*

March 28, '54.

Commissioner's Return.

Executed by delivering a true copy of within to H. S. Buckner, defendant, in person. New Orleans, April 5th, 1854.

HORACE KEATING,
Commissioner of Miss. for La.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans.

Before me, Marcellus A. Foute, a commissioner of the State of Mississippi, in and for the State of Louisiana, duly appointed, commissioned, and qualified, personally came and appeared Horace Keating, of the city, parish, and State aforesaid, to me well known, who being sworn, deposes, that he served and executed the within subpœna according to his return thereon written, this 5th day of April, A. D. 1854, by delivering a copy thereof to Henry S. Buckner.

[SEAL.] In witness whereof, I have hereunto set my hand and seal of office, this 5th day of April, 1854.

MARCELLUS A. FOUTE,
Commissioner in and for Louisiana.

Subpœna.

On the same day the following subpœna was issued to Adams county, to wit:

THE STATE OF MISSISSIPPI,
Superior court of chancery of the State of Mississippi, to wit:

To Frederick Stanton, greeting:

For certain causes offered before us in our superior court of chancery of the State of Mississippi, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at a superior court of chancery, to be holden at the court-room in the city of Jackson, on the first Monday in June next ensuing, to answer a bill of complaint exhibited against you and H. S. Buckner, by James L. Calcote, complainant, in our said court; and further to do and receive what our said court shall have considered of this behalf, and this you shall in no wise omit, under the penalty of one hundred dollars, as well as the consequences that may fall thereon; and have then and there this writ.

Witness the honorable Charles Scott, chancellor of the State of Mississippi, at the city of Jackson, the first Monday in March, in the year of our Lord one thousand eight hundred and fifty-four, and in the sovereignty and independence of the United States of America the 77th.

[SEAL.]

Issued the 28th day of March, 1854.

J. T. SIMMS, *Clerk.*

To the sheriff of Adams county to execute and return.

Upon the back of which was the following endorsement by the clerk, to wit:

This bill is filed to set aside your discharge in bankruptcy, and for the recovery of money to the amount of one million eighty-six thousand nine hundred and twelve dollars and five cents, with costs and interests.

March 28th, 1854. J. T. SIMMS, *Clerk.*

Endorsed by sheriff, to wit:

Executed March 31st, 1854, on Frederick Stanton, by delivering him a copy of the writ in person.

$2 25. O. METCALF, *Sheriff.*

Publication.

On the 7th day of April, 1854, being rule day, the following order of publication was entered on the minutes of our said court, to wit:

THE STATE OF MISSISSIPPI.

Superior court of chancery of the State of Mississippi.—April rules, 1854.

JAMES L. CALCOTE
vs. } 5264.
FRED. STANTON et al.

Upon opening the complainant's bill, and it appearing to the satisfaction of the court, that the defendant, Henry S. Buckner, is not a citizen of this State, but resides beyond the limits thereof, so that the ordinary process of this court cannot be executed upon him, therefore it is ordered, that he enter his appearance herein, at the next term of this court, to be holden at the court-room in the city of Jackson, on the first Monday in June next ensuing, and plead, answer, or demur to complainant's bill, otherwise the several allegations thereof will be taken for confessed against him, set for hearing ex parte, and the matters thereof decreed accordingly.

It is further ordered, that a copy of this order be published in the "Flag of the Union," a public newspaper, printed in the city of Jackson, once a week for two months.

J. T. SIMMS, *Cl'k.*
By L. MIMS, *D. C.*

YERGER, ANDERSON, DAY and BOYD, *Sol's.*

April 7th, 1854. 18—9t.

Publication.

On the 21st of April, being rule-day, the following other order of publication was entered on said minutes, to wit:

THE STATE OF MISSISSIPPI.

Superior court of chancery of the State of Mississippi.—April rules, 1854.

JAMES L. CALCOTE
vs.
FREDERICK STANTON et al.

Upon opening complainant's bill, and it appearing to the satisfaction of the court, that the defendant, Henry S. Buckner, is not a citizen of this State, but lives beyond the limits thereof, so that the ordinary process of this court cannot be served upon him, it is ordered that he enter his appearance herein, on or before the first day of the next term of this court, to be holden in the city of Jackson, on the first Monday in June next ensuing, and plead, answer, or demur to the complainant's bill, or the several allegations thereof will be taken as confessed as to them. It is further ordered, that a copy of this order be published in

the Mississippian, newspaper published in the city of Jackson, once a week for one month.

J. T. SIMMS, *Cl'k.*
By L. MIMS, *D. C.*

WM. YERGER, ANDERSON, BOYD and DAY, *Sol's.*

Ap'l 21, 1854.—1m.

Proof of Publication.

On the 5th day of June, 1854, the following proof of publication was filed, to wit, with a copy of the publication attached thereto:

THE STATE OF MISSISSIPPI,
Hinds county, ss:

I, Thomas Palmer, publisher of the newspaper entitled "Flag of the Union," printed at Jackson, in the county and State aforesaid, being duly sworn, do depose and say, that a notice, of which the foregoing print is a copy, (herein before copied,) was published in said newspaper for 9 weeks successively, as follows:

Commencing in number 18 of volume 4, of the date of April 7th, 1854, and ending in number 26 of volume 4, of the date of June 2d, 1854.

THOMAS PALMER,
Publisher of "Flag of the Union."

Sworn to and subscribed this third of June, 1854, before me,
R. FLETCHER,
Mayor and ex-officio Justice of the peace.

THE STATE OF MISSISSIPPI,
Hinds county.

I, Richard Fletcher, mayor and ex-officio justice of the peace, before whom the above affidavit was made, do certify, that the newspapers containing the public notice therein specified have been produced before me, and by me compared with the copy of said notice, and with the affidavit of said Thomas Palmer, and that they are correct and truly made.

Given under my hand and seal, this 3rd day of June, 1854.

RICH'D FLETCHER, [L. S.]
Mayor and ex-officio Justice of the peace.

Printer's fee $15 00. Rec'd payment of compl't.

THOS. PALMER.

Filed June 5, '54.

MIMS, *D. C.*

Proof of Publication.

On the same day, the following other proof of publication, with a copy of said notice thereto attached, was filed, to wit:

THE STATE OF MISSISSIPPI,
Hinds county, ss:

I, E. Barksdale, one of proprietors of the newspaper called the "Mississippian," printed at Jackson, in the county and State aforesaid, being duly sworn, do depose and say, that a notice, of which the foregoing print is a copy, (herein before copied,) was published in said newspaper for five weeks successively, as follows:

Commencing on the 21st day of April, 1842, and ending on the 19th day of May, 1854.

E. BARKSDALE.

Sworn to and subscribed this 5th day of June, 1854, before me,
D. N. BARROWS, *J. P.*

THE STATE OF MISSISSIPPI,
Hinds county, ss:

I, D. N. Barrows, the justice of the peace before whom the above affidavit was made, do certify, that the newspapers containing the public notice therein specified, have been produced before me, and by me compared with the copy of said notice, and with the affidavit of the said , and that they are correct and truly made.

Given under my hand and seal, this fifth day of June, 1854.

J. P. Fee pd. 50 c.

D. N. BARROWS, [SEAL.]
A justice of the peace for the county of Hinds.

Filed 5 June, '54.

MIMS, *D. C.*

Demurrer.

On the 7th day of June, 1854, the following demurrer of defendants was filed, to wit:

In the superior court of chancery of the State of Mississippi.—(To the June term thereof.)

JAMES L. CALCOTE
vs.
FREDERICK STANTON & H. S. BUCKNER. } Demurrer.

The joint and several demurrer of Fred'k Stanton and Henry S. Buckner to the bill of complaint of James L. Calcote.

These defendants, by protestation, not confessing any of the matters in said bill complained of to be true, in manner and form as the same are set forth, severally say, that they *that they* are advised that there is no matter or thing set forth in said bill, good and sufficient in law to call these defendants to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and they do demur accordingly, and for cause of demurrer say, that said bill, in case the same were true, contains no matter of equity whereon this court can

ground any decree, or give complainants any relief as against these defendants; therefore, and for divers other errors in said bill contained, appearing on the face thereof, these defendants do demur thereto, and humbly crave the judgment of this honorable court, whether they are compelled or ought to make any answer thereunto, otherwise than as aforesaid.

And these defendants humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained. And for special cause of demurrer the defendants assign the following:

First. No sufficient ground is shown in said bill for the interference of this court.

Second. Complainant has not stated any assignment for a consideration good and sufficient in law to vest in him any right to the claims named in said bill, or any title as assignee, to sue for and recover the amount thereof, either at law or in equity.

Third. Complainant seeks to recover on the claim of Buckner, Stanton & Co., which was not assetts in the hands of the assignee in bankruptcy; and the alleged assignment thereof to complainant created no liability, on the part of these defendants, to account with him therefor, either in law or in equity.

Fourth. If there be any remedy at all, it is at law, and not in equity.

Fifth. The complainant shows that his claim is barred by the statute of limitation.

Sixth. There is a want of proper parties complainants.

Seventh. There is a want of proper parties defendants.

Eighth. The complainant is not entitled to a discovery from these defendants of the matters and things, or any of them, as set forth in said bill.

Ninth. The complainant's bill does not contain a case which entitles him to a remedy, either in law or equity.

Tenth. And the said bill is otherwise informal, uncertain, and insufficient.

SHARKEY & WITHERS,
J. WINCHESTER,
Solicitors for Defendants.

Filed June 7, '54. SIMMS.

Order of Court.

On Monday, July 3d, 1854, the following order was entered on the minutes of our said court, to wit:

JAMES L. CALCOTE
vs. } 5264.
BUCKNER & STANTON.

Monday, July 3d, 1854.

Ordered, that the demurrer of the defendants herein be, and the same is hereby, overruled, and that they be allowed till the 1st Monday in October next, by which time to file their answer herein.

And the defendants feeling themselves aggrieved by the foregoing order, pray an appeal therefrom to the next term of the high court of errors and appeals, which is granted upon their entering into bond in the penalty of five hundred dollars, conditioned according to law, with security to be approved by the chancellor within thirty days.

Appeal Bond.

On the 1st day of July, 1854, the following appeal bond was approved and filed, to wit:

Know all men by these presents, that we, Frederick Stanton, H. S. Buckner, Joshua Green, and J. S. Sizer, are held and firmly bound unto James L. Calcote, in the just and full sum of five hundred dollars, for the payment of which well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 4th day of July, A. D. 1854:

The condition of the above obligation is such, that whereas the above bound Fred. Stanton and H. S. Buckner have prayed and obtained an appeal to the high court of errors and appeals from an order overruling their demurrer, rendered in the superior court of chancery of the State of Mississippi, at the June thereof, A. D. 1854, in the suit between the said James L. Calcote, complainant, and Fred. Stanton and Henry S. Buckner, defendants:

Now, should the said order overruling said demurrer of said defendants be affirmed, then, if the said Fred. Stanton and H. S. Buckner shall pay, satisfy, and perform the decree or final order of said court of chancery, then this obligation to be void, else to be and remain in full force and effect.

FRED'K STANTON, [SEAL.]
H. S. BUCKNER. [SEAL.]
By SHARKEY & WITHERS,
Attorneys in fact.
JOSHUA GREEN, [SEAL.]
J. S. SIZER. [SEAL.]

Signed, sealed, and delivered in presence of—

Examined and approved, July 4, 1854.
CHAS. SCOTT, *Chancellor.*

Filed July 4, '54. SIMMS, *Clerk.*

Order of Court.

On the 4th day of July, 1854, the following order was entered on the minutes of said court, to wit:

JAMES L. CALCOTE
vs. } 5264.
BUCKNER & STANTON.

July 4th, 1854.

The defendants now come and present their appeal bond, which is hereby approved.

Clerk's Certificate.

THE STATE OF MISSISSIPPI.

I, J. T. Simms, clerk of the superior court of chancery of said State, do hereby certify, that the foregoing eighty pages contain a true and complete transcript of all the pleadings, process, and orders, of every sort, had, filed, and done in the case of James L. Calcote vs. Frederick Stanton and Henry S. Buckner, No. 5264, in our said court, as remains on file and of record in my office.

[SEAL.] Given under my hand and seal of office, at the court-room in the city of Jackson, this 21st day of July, A. D. 1854.

J. T. SIMMS, *Clerk.*

From minutes of the High Court of Errors and Appeals.

And afterwards, to wit, on Tuesday, 1st May, 1855, the same being a day of the term of our said high court, begun and held for said State, at the capitol at Jackson, on the 3d Monday of April, A. D. 1855, the following among other entries in said cause was made upon the minutes of said court, to wit:

STANTON and BUCKNER vs. JAMES L. CALCOTE. } 7153.

This cause was argued by Mr. Sharkey, of counsel for the appellants.

And afterwards, to wit, on Wednesday, the 2d May, 1855, it being also a day of said April term, 1855, begun and held as aforesaid, the following was entered on the minutes of said court in this cause, to wit:

STANTON and BUCKNER vs. JAMES L. CALCOTE. } 7153.

This cause was argued by Mr. Anderson, of counsel for the appellee, and by Mr. Potter, of counsel for the appellants.

And afterwards, to wit, on Thursday, 3d May, 1855, the same being also a day of said April term, 1855, of said high court, begun and held as aforesaid, the following entry was made upon the minutes of said court in this cause, to wit:

STANTON and BUCKNER vs. JAMES L. CALCOTE. } 7153.

This cause was argued by Mr. Boyd, of counsel for the appellees.

And on May, the 4th, 1855, another day of said term of said court, begun and held as aforesaid, the following entry in said cause was made upon the minutes of said court, to wit:

STANTON and BUCKNER vs. JAMES L. CALCOTE. } 7153.

This cause was argued by Mr. Wm. Yerger, of counsel for the appellees.

And on Saturday, 5th May, 1855, it being also a day of said April term, 1855, of said court, begun and held as aforesaid, the following entry was made in this case, to wit:

STANTON and BUCKNER
vs. } 7153.
JAMES L. CALCOTE.

This cause was argued by Mr. J. Winchester, of counsel for the appellants, and thereupon it was submitted upon printed briefs by the counsel arguing, and by Mr. Eustis, also for the appellants.

And now afterwards, to wit, on Wednesday, the 30th day of May, 1855, the same being a day of the term of said high court, begun and held at the capitol at Jackson, on the 3d Monday of April, A. D. 1855, the following final decree was rendered by said court in this cause, to wit:

BUCKNER and STANTON
vs. } 7153.
JAMES L. CALCOTE.

This cause having been submitted on a former day of this term upon the record from the superior court of chancery, and this court having sufficiently examined and considered the same, and being of opinion that there is error in the decree of said court rendered in this cause at the June term thereof, in the year 1854, overruling the demurrer of the appellants to the bill of complaint of the appellee, it is therefore considered by this court, and so ordered, adjudged, and decreed, that the said decree of the said court be, and the same is hereby reversed; and this court, now proceeding to render such decree as that court should have rendered, and being of the opinion that the bill cannot be maintained, orders, adjudges, and decrees that said demurrer be sustained, and that said bill be, and the same is hereby dismissed with costs.

And further, that the appellants do have and recover of the appellee the costs of this cause in this court, and in said superior court of chancery, &c.

And afterwards, to wit, on Wednesday, June 6, 1855, also a day of said term of said court, begun and held as aforesaid, the following order was made in this cause, to wit:

STANTON and BUCKNER
vs. } 7153.
JAMES L. CALCOTE.

On application of Mr. F. Anderson, of counsel for the appellee, it was ordered that the period within which an application for re-argument may be filed, be extended to Monday, the 18th June, instant.

And afterwards, to wit, on Saturday, June 23d, 1855, a day of said term of said court, begun and held as aforesaid, the following order was made in this cause:

STANTON and BUCKNER
vs. } 7153.
JAMES L. CALCOTE.

Mr. Fulton Anderson, on behalf Mr. Calcote, this day presented a petition for re-argument in this case, when it was ordered by the court that the same be filed and submitted, which is done accordingly.

And on Monday, the 2d day of July, 1855, the same being also a day of the term of said court, begun and held at the capitol at Jackson, on the 3d Monday of April, A. D. 1855, the following order was made and entered on the minutes of said court in this cause, to wit:

STANTON and BUCKNER
vs. } 7153.
JAMES L. CALCOTE.

On consideration of the petition for re-argument, filed in this case on a former day of this term on behalf of the appellee, it is ordered that said petition be, and the same is hereby overruled, and such re-argument refused.

THE STATE OF MISSISSIPPI,
High court of errors and appeals.

I, Samuel Livingston, acting clerk of said court, do hereby certify that the preceding seventy-seven pages do contain a full, true, and perfect copy of the transcript of the record in the case of Stanton and Buckner, appellants, vs. James L. Calcote, appellee, No. 7153, on appeal from the superior court of chancery of said State of Mississippi, filed in my office, on the 16th day of October, A. D. 1854, together with all the proceedings, orders, and final decree of our high court thereon, as the same remains of record and on file in my office.

In testimony whereof, I hereunto subscribe my name and affix the [SEAL.] seal of said court, at office at the capitol, at the city of Jackson, this 29th day of October, in the year of our Lord 1855.

SAMUEL LIVINGSTON,
Acting clerk of high court of errors and appeals of Mississippi.

Know all men by these presents: That we, James L. Calcote and Jos. E. Kirk, and O. Metcalfe, are held and firmly bound unto Frederick Stanton and Henry S. Buckner, in the sum of five hundred dollars, to be paid to the said Frederick Stanton and the said Henry S. Buckner, their executors and administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 4th day of October, one thousand eight hundred and fifty-five.

The condition of this obligation is such, that whereas the said Frederick Stanton and the said Henry S. Buckner have recovered a judgment in the high court of errors and appeals of the State of Mississippi,

against the said James L. Calcote, reversing the decree of the superior court of chancery of said State of Mississippi, made in said case between said parties, and dismissing the bill of complaint of the said James L. Calcote against said Frederick Stanton and Henry S. Buckner, in said superior court of chancery, which said judgment was rendered at the April term, one thousand eight hundred and fifty-five, of said high court of errors and appeals; and whereas, the said James L. Calcote, in order to obtain a reversal of the same, hath sued out a writ of error to the Supreme Court of the United States:

Now, therefore, if the above named James L. Calcote shall prosecute his said writ of error to effect, and shall answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force virtue.

Executed and delivered in the presence of

JAS. L. CALCOTE, [SEAL.]
J. E. KIRK, [SEAL.]
O. METCALFE, [SEAL.]

Executed and delivered in the presence of—
Attest: JOHN F. CROMPTON.

The foregoing bond has been examined, and is hereby approved by me.

C. P. SMITH, [SEAL.]
Chief justice of the high court of errors and appeals of the State of Mississippi.

Oct. 8th, 1855.

Citation in Error.

THE UNITED STATES OF AMERICA:

The President of the United States, to Frederick Stanton and Henry S. Buckner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the high court of errors and appeals of the State of Mississippi, wherein James L. Calcote is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable C. P. Smith, chief justice of the high court of errors and appeals of the State of Mississippi, 8th day of October, in the year of our Lord one thousand eight hundred and fifty-five.

C. P. SMITH. [SEAL.]

STATE OF LOUISIANA,
Parish of Orleans, ss:

Personally came and appeared before the undersigned, a justice of the peace in and for the parish of Orleans, and State aforesaid, Azel

B. Bacon, who, being first duly sworn, deposeth and says, *the* he served a true copy of the within citation on the within named Henry S. Buckner, in said parish, on the 29th day of October, A. D. 1855, and that he at the same time exhibited the within and original citation to said Buckner.

A. B. BACON.

Sworn to and subscribed before me, this the 29th day of October, A. D. 1855.

CR. JOUTE,
Justice of the peace for the parish of Orleans.

STATE OF MISSISSIPPI,
Adams county, ss:

Personally came and appeared before the undersigned, a justice of the peace in and for the county of Adams, State aforesaid, O. Metcalfe, who, being first duly sworn, deposeth and says, that he served a true copy of the within cititation on the within named Frederick Stanton on the 26th day of October, A. D. 1855, in said county, and at the same time that he exhibited the within and original citation to said Stanton.

O. METCALFE.

Sworn to and subscribed before me, this Oct. 26th, 1855.
RO. W. WOOD, *J. P.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the high court of errors and appeals of the State of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment, in a suit before you or some of you, between Frederick Stanton and Henry S. Buckner, plaintiffs and appellants in error in said high court of errors and appeals, and James L. Calcote, defendant in error in a suit in equity, a manifest error hath happened, to the great damage of the said James L. Calcote, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may

cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 22d day of October, in the year of our Lord one thousand eight hundred and fifty-five.

[SEAL.]

W. H. BROWN, *Cl'k*
Circuit court U. S., So. Dist. Miss'i.

Allowed.

C. P. SMITH, [SEAL.]
Chief justice of the high court of errors and appeals of the State of Mississippi.

In obedience to the command of the within writ of error, I herewith send and return to the Supreme Court of the United States, at Washington, a full, true and perfect transcript of the record and proceedings had and done in the cause in said writ of error mentioned, together with the writ of error bond given in said cause by James L. Calcote, the plaintiff in error, and also the citation served in said cause and the proof of service thereof.

SAMUEL LIVINGSTON,
Acting clerk of high court of errors and appeals of Miss.

3407

SUPERIOR COURT—*In Chancery.*

HENRY S. BUCKNER and FREDERICK STANTON
vs.
JAMES L. CALCOTE.
} No. 7153.

April Term, 1855.

This was a bill filed in the superior court of chancery by the appellee against the appellants, to recover a very large sum of money, exceeding a million of dollars, and to that end to set aside and annul the certificates of discharge granted to the appellants as bankrupts, under the act of Congress of 1841. The material facts stated in the bill are, in substance, as follows:

That the appellants and M. B. Hamer, in the years 1841 and 1842, and for several years anterior, were partners in the commercial business in New Orleans, where Buckner resided, under the name and firm of Buckner, Stanton & Co.; in Natchez under the name and firm of Stanton, Buckner & Co., Stanton being the resident partner there; and at Yazoo city, where Hamer resided, under the firm of M. B. Hamer & Co.; Buckner, Stanton, and Hamer being the only members of the three firms; that they carried on their commercial business and partnership trade at each of the places named, and that the three firms were entirely distinct and separate from each other, and kept their business, books, and accounts accordingly; that in the year 1841 the three firms, and each of the individual members, became hopelessly insolvent, but continued to transact their partnership business under their firm names, at the three places, up to the time of the bankruptcy of Buckner and Stanton, though Hamer died in April, 1842; that Stanton filed his petition in bankruptcy on 21st July, 1842, in the district court U. S. in Mississippi—was declared a bankrupt in November, 1842, and in February, 1843, was finally discharged from all his debts, both as an individual and as a member of the three firms; that on the 18th July, 1842, Buckner filed his petition as a bankrupt in the district court U. S. in Louisiana—was so declared in September, 1842, and in December, 1842, obtained his final discharge in like manner as Stanton had done; that these proceedings were taken by them in concert, it being understood between them that the firms were insolvent and bankrupt, and that it was necessary, in order to their future business, that they should each obtain a discharge from his debts as an individual, and as a member of the firms, the latter indebtedness being the principal, if not the sole cause of their insolvency; that Joseph Sill was appointed assignee in bankruptcy of Buckner, and thereby became vested with all the property and rights of property of Buckner, and Buckner, Stanton & Co., by operation of law; that among the effects of Buckner, Stanton & Co., vested in the assignee, in pursuance of the understanding between Buckner and Stanton, express or implied, that they would apply to be discharged as bankrupts, were two claims,

being balances of accounts due the firm of Buckner, Stanton & Co.; one from Stanton, Buckner & Co. for about $254,987 21, and the other from M. B. Hamer & Co. for about $392,463 92; which debts were returned in the bankrupt schedule of Stanton as a part of his indebtedness, and these debts were surrendered by Buckner in his schedule, with the knowledge and approbation of Stanton; that on the 9th May, 1844, the district court U. S. in Louisiana ordered a sale of the assets of Buckner, and of Buckner, Stanton & Co., surrendered by Buckner in his inventory of the assets of that firm, amongst which were the two claims, which had been considered by the firms as stated accounts due the firm of Buckner, Stanton & Co., and in June, 1844, Samuel W. Oakey became the purchaser of those claims at the sale made by the assignee, and in November, 1844, filed his petition in the district court U. S. in Mississippi, claiming to be a creditor of Stanton and of the two firms of Stanton, Buckner & Co., and M. B. Hamer & Co., in virtue of his purchase, and praying to be allowed his pro rata share of the estate; whereupon it was decreed and adjudged that Oakey was a creditor of said firms in Mississippi, and of Stanton, and entitled to his allowance, and he afterwards received his dividend accordingly; that Oakey afterwards, and in March, 1854, transferred and assigned all his right, title, and interest in and to the balances and claims, proved and allowed as aforesaid, to the appellee.

The bill further states that the firm of Stanton, Buckner & Co. was indebted to Montgomery & Boyd in the sum of $1,315 51, which debt was proved in the bankrupt court in Mississippi, and a dividend received thereon, and was afterwards transferred to the appellee.

It further charges, that shortly before the appellants went into bankruptcy, and in contemplation thereof, they made sundry preferences of particular creditors, by means of negotiations in bank and appropriations of their assets to that purpose, in violation of the bankrupt act, and fraudulently, and also concealed and secreted a considerable amount of their assets and property, of which they have ever since had the use and possession, which property and assets were fraudulently concealed and not returned in their schedules in bankruptcy; and that, therefore, the decrees discharging the appellants as bankrupts were obtained by fraud, and should be declared void.

The bill further states that the appellee and Oakey, and Montgomery & Boyd, had no notice of these fraudulent acts, nor of any facts calculated to put them on inquiry, but were in entire ignorance of the same until within eighteen months next before the filing of the bill, but since that time they have used all diligence and every effort in their power to ferret out the frauds complained of.

To this bill a demurrer was filed, raising many objections to its sufficiency, and relying on the statute of limitations as a defence. The demurrer was overruled in the court below, and from that decree this appeal is taken.

This case involves many important questions, arising from the complex and peculiar state of facts presented in the record, and it has re-

ceived from the court that careful investigation and consideration due to the large interests and the important legal principles involved, as well as to the distinguished ability and learning with which it has been argued by the counsel for the respective parties. We now proceed to state the conclusions to which we have come upon the principal points which are decisive of the merits of the case.

I. The first and most important question to be examined is, what right or claim against Buckner or against Stanton, or Stanton, Buckner & Co., passed to the assignee in New Orleans, in virtue of the proceedings in bankruptcy there? What was its character, extent, and legal force? Whatever that claim was, it passed to the assignee in bankruptcy, and from him to Oakey, and from Oakey to the complainant—but in being transmitted through these several hands, it is plain that it could acquire no greater extent as a debt, than it had when it passed to the original assignee.

First. As to Buckner individually, the right surrendered to the assignee was not a debt against him, but his individual property and rights of property, and his interest in the assets of Buckner, Stanton & Co., including the balance due that firm from the Mississippi firms, and his interest in those firms. It could not be considered as having greater force or effect than a claim *due him*, and which vested in his assignee; nor could it possibly be converted into a claim *against him*, which could be used to impeach his discharge, or otherwise be used as a debt against him, any more than a private assignment of his individual property, or of his interest in the firm, could have rendered the right so assigned a debt against him. It was the means appropriated by law to pay his old debts, and not the creation of a new liability. If he failed to return a true schedule of his property, rights and assets, the assignee would have been competent to pursue them wherever they could be found, because they were all vested in him by the decree, whether specified in the schedule or not. But the assignee had no right to impeach his certificate, and to raise up a debt against him which did not exist when he was declared a bankrupt, and that founded upon the very assets which he had surrendered as the means of paying his debts. When the bankrupt delivered to the assignee his property and rights of property, he had no further claim upon him. His power was confined to the collection and appropriation of the debts due the bankrupt for the payment of debts against him. And it is manifest, as he could assert no claim against the bankrupt on account of the debts surrendered by him, he could transfer no such right to any subsequent assignee or purchaser of the bankrupt's assets. This conclusion appears to be palpable beyond the possibility of successful controversy.

So far, then, as the bill seeks to render Buckner liable by any title of the complainant deduced from the assignee, in virtue of Buckner's individual rights which passed under his bankruptcy, it is obvious that it cannot be maintained.

Secondly. Let us inquire what passed against the Mississippi firms, or against Buckner and Stanton, or either of them, by the sale of the assignee in bankruptcy. The bill is founded on the idea that the entire interest in the balances of account due the New Orleans firm by the Mississippi firms vested in the assignee, and was transferred to the complainant; and this presents a question of vital importance in the case.

The bill alleges in substance, on this point, that Buckner and Stanton severally made their applications, the former in Louisiana and the latter in Mississippi, each alleging that he had been unable to meet his debts, and that each filed schedules showing that he was largely indebted both individually and as a member of the three firms. That the applications and proceedings thereunder were made and had in concert with each other, under an agreement and understanding *to obtain their several discharges*, on the understanding between them that the firms were insolvent and bankrupt, and that it was necessary, in order to their future business, that they should obtain, *each of them, discharges in bankruptcy from their individual indebtedness, and from their indebtedness as members of said firms*, the debts of the firms being the principal cause of their insolvency. That Buckner and Stanton were upon their petitions severally declared bankrupts, and each of them was "decreed and allowed a full discharge *from all his debts and engagements.*" That one Sill was appointed assignee of Buckner, by the court in Louisiana, "and thereby all the property and rights of property of every name and nature, whether real, personal, or mixed, of the said Buckner, and said Buckner, Stanton & Co., were, *by operation of law*, from the time of said decree in bankruptcy, divested out of said Buckner, and said Buckner, Stanton & Co., and vested in said Sill." That among the effects surrendered by Buckner, by and with the knowledge and approbation of Stanton, under the understanding and agreement before that time, express or implied, between Stanton and Buckner, that they would apply for the benefit of the Bankrupt act, were two claims, being balances of accounts due the firm of Buckner, Stanton & Co., from the two Mississippi firms. That an order of sale was made by the bankrupt court in Louisiana, directing "a sale of all the assets, real and personal, of Buckner, and Buckner, Stanton & Co., surrendered by Buckner, and set forth in the inventory of the assets of Buckner, Stanton & Co.," annexed to Buckner's petition, "amongst which assets were the two claims or balances of accounts." That, in pursuance of this order, the assignee made the sale of the two balances of account, and Oakey became the purchaser, and was afterwards, in the bankrupt court in Mississippi, allowed to prove his claim founded thereon, and to receive a dividend from the estate of Stanton.

It appears from this statement of the contents of the bill, that the application of Buckner to be discharged as a bankrupt was made *in behalf of himself*, as an individual, and on account of his liabilities for the firms mentioned. The recital of the proceedings in relation to the

bankruptcy does not show that *the firm* of Buckner, Stanton & Co., went into bankruptcy; that it was declared bankrupt, or that any fiat or decree was made by the court sitting in bankruptcy, ordering the assignee to take possession of the assets of the firm *as a bankrupt firm*, under the provisions of the 14th section of the Bankrupt act. It does not appear that the court ever undertook or intended to act upon *the firm;* and without a special order for that purpose, the assignee could have had no power to take and dispose of the assets of the firm, so as to divest the rights of the other partners, and to vest the entire interest in the assets of the firm in a purchaser at his sale. This is an extraordinary power, only to be exercised by the special order of the court, which it is incumbent on any party claiming title under it to show affirmatively. Parker & Blanchard, *in re* Muggridge and others; 5 Law Reporter, 351, 359; Ayer vs. Barstow, Ib. 498; and upon well recognised principle, in the absence of a special showing that the power was exercised by the court, it cannot be presumed to have been exercised under the provisions of the 14th section.

The order alleged in the bill is, that the assets surrendered by Buckner, in his own right, and as a partner of Buckner, Stanton & Co., should be sold. Now those assets were not surrendered by him in behalf of the firm, but the whole proceeding, as it is recited in the bill, shows that the object was his individual discharge from his private debts and liabilities as a member of the firms. This is plain from his petition and the decree as stated, and it is rendered more manifest by the fact, that Stanton, although acting under an agreement that both he and Buckner should obtain discharges as bankrupts, and the firm debts were the principal cause of their insolvency, filed his separate petition, and was separately decreed a bankrupt in Mississippi, and discharged. This would have been unnecessary, if, as was most desirable to them, it had been intended to include the firm in bankruptcy, as well as the individual members of it; for all this could have been effected by the one proceeding in New Orleans, by the provisions of the 14th section.

It is evident, therefore, that all that passed by operation of the order of court, and the sale made under it, was the interest which Buckner, whose rights alone were acted upon, had in the accounts due the firm of Buckner, Stanton & Co.

The agreement and understanding between Buckner and Stanton, alleged in the bill, are but private acts, which are not shown to have been acted upon by the court in Louisiana, or to have been represented to that court; and if that could have warranted the assignee in disposing of the assets of the firm in any event, so far as the interests of Buckner and Stanton were concerned, they could not be allowed to affect the interest of Hamer, for he was then dead, and the partnership was thereby dissolved, and, under the law of Louisiana, the partnership property could not be transferred without the consent of his heirs. 4 La. Rep. 32, 8 Ib. 568, 18 Ib. 332.

What, then, was the position of Buckner, as a member of the firms in Mississippi, in consequence of the sale of his interest in the New Orleans firm, and in the stated accounts due that firm from the Mississippi firms? It is clear that the transfer of his interest in the New Orleans accounts against the Mississippi firms did not create or continue an indebtedness against him as a member of the Mississippi firms; for he was discharged as a bankrupt both from his indebtedness individually, and as a member of all the firms. He surrendered his interest in the firms, but was necessarily discharged from further liability as a member of the debtor firms to the creditor firm; for otherwise the declared object of his application, as stated in the bill, would have been defeated, and it would produce the absurd conclusion that he surrendered, as part of his assets, a claim against himself jointly with the other partners of the Mississippi firms, which remained a debt against him notwithstanding his discharge from all his debts, both as an individual and as a member of those firms.

The debt due to the New Orleans firm, which passed to the assignee there, could, therefore, only be against Stanton and Hamer. Let us see what was its nature and legal effect.

The three partners being all members and sole members of the three firms, and being, in legal presumption, equal partners, when the assignee asserts his claim against Stanton or Hamer, in virtue of the assignment of Buckner's interest in the debt due to the New Orleans firm, he learns that Buckner was indebted on account of the Mississippi firms precisely in the same sum that he was creditor against them in the New Orleans firm. Buckner surrendered no greater right against his co-partners than he could have exercised himself. If he had died, and his estate had passed into the hands of his administrator, it will not be denied that he would have been entitled against the co-partners to such sum only as should be found due him upon a settlement of all accounts between the partners and firms, after the payment of all their debts. If he had assigned to an individual his interest in the accounts due the firm in New Orleans, it will not be pretended that the assignee could have taken any greater right than he had himself. He could but have taken his place in the settlement of the affairs of the firms. Brown vs. Heathcote, 1 Atkins, 160. Mitford vs. Mitford, 9 Vesey, 87; 6 Law Reporter, 347. Nor could such an assignee have claimed any equity, because the books of the firm in New Orleans showed, and it was a conceded fact, that there was a balance against the two other firms in favor of the New Orleans house; for he would have taken it, subject to all the equities existing between the partners themselves. The very fact that all the firms were composed of the same members would have been notice in law to him, that if his assignor was a creditor on the New Orleans books, he was at the same time a debtor on the Mississippi books to the same amount; and if, under such circumstances, he had purchased the interest of the New Orleans partner, under the delusion that he obtained it discharged of all responsibilities and equities attached to it in the assignor's hands, it would certainly

give him no right to enforce such a demand in equity. The same result as to Buckner's interest would have taken place, if, upon the death of Hamer, instead of going into bankruptcy there had been a private settlement, or by accounting in chancery of the partnership affairs. One could not have been equitably settled to the exclusion of the other, and, in any event, Buckner was only entitled to call upon the other partners for a settlement of all partnership accounts, and could only claim what should be due him after the payment of all the debts of the firms, and upon an account of the respective interests of the partners *inter se*. And we think it clear that the assignee of Buckner's bankruptcy acquired no greater right than this.

But suppose the interest of Stanton in the stated accounts of the New Orleans firm passed under the surrender of Buckner. According to the bill, this was done as a matter of private agreement and consent on the part of Stanton, in order that he might be discharged of all his debts, and especially those of the firms. The surrender of his interest was not by judicial proceeding, and is not shown to have been acted upon by any of the parties claiming as purchasers of the New Orleans debt, nor by the assignee in bankruptcy. Under such circumstances he would not be bound to surrender his interest; and unless he should be discharged of all his debts, he might well refuse his consent, the object of which had failed; and surely a court of equity would hesitate long before it would hold that an interest intended to be surrendered for such a purpose should be used as the very means of preventing his discharge from his debts, in the hands of strangers who were not creditors either of the individual or of the firms, and not representing such creditors.

Again, there can be no pretence that the interest of Hamer in the assets of the New Orleans house passed by the bankruptcy of Buckner; for the proceedings on his petition did not embrace the firm of Buckner, Stanton & Co., as is above shown, and it is not alleged that there was anything apart from that which caused Hamer's interest to pass to the assignee in New Orleans.

It is clear, therefore, that the debts due the firm of Buckner, Stanton & Co. cannot be considered as having vested in the assignee in bankruptcy, and to have passed to Oakey, as a purchaser, so as to constitute him a creditor of the Mississippi firms, in virtue of being the holder of those debts, and give him a right to sue thereupon; and that the assignee, and Oakey, and Calcote who derived title from him, only succeeded to the interest and rights of Buckner, which was to call for a settlement of the partnership accounts, and to demand any balance that should be found to be due thereupon to Buckner. This bill looks to no such purpose, but it is founded on the claim that the complainant is the assignee of the entire debt due the firm of Buckner, Stanton & Co.

But it insisted, in support of the bill, that the debt due on the books of the New Orleans firm, as stated accounts against the Mississippi firms, were debts admitted to be due from the latter firms to the former,

thus establishing the relation of debtor and creditor between them. That the three firms being, according to the allegations of the bill, entirely separate and distinct concerns, must be regarded as separate existences; and, though composed of the same members, capable of sustaining the independent relation of debtor and creditor, and that debts due to the New Orleans firm from the Mississippi firm were assets of the creditor firm, to which the creditors of that firm were entitled without regard to the condition of the firms, as between the individuals comprising them. Upon this point, many authorities from the English courts of bankruptcy have been cited to show that a debt existed in favor of the New Orleans firm, which was available to the creditors of that firm. Without pursuing the many nice distinctions and artificial rules upon which those cases for the most part turn, it is to be observed that the principle on which they appear to be founded is, that when the firms are entirely separate and distinct, a debt due, upon distinct dealings, from the one to the other is, as to the creditors of the latter, considered as assets of the latter, and a trust fund for the payment of the creditors who have dealt with it; and that such creditors, in case of bankruptcy of the firms, are entitled to assert their claim against the debtor firm in virtue of their claim as creditors of the creditor firm, the firms being considered as distinct concerns, for the purpose of distribution of their assets among their respective creditors.

But this appears to be a rule of administration of assets peculiar to courts of bankruptcy, which is only applied under the following circumstances:

1. The firms must not only be separate and distinct, but there must be some of the members belonging to one firm either actually, or in law, as to the rights of creditors, and not belonging to the other firm. This was the case in Ex-parte Cook; Collier on Part., sec. 1004, Ib. sec. 1000.

2. When the partners are all the same persons, not only the "firms," but the "trades" must be perfectly distinct. Ex-parte St. Bartee, 11 Ves. 414; Shakeshaft, Stirrup, and Salisbury, Cook's Bank. L. 538. For otherwise they will be considered as "one partnership, arranging different concerns belonging to them in different ways." Lord Eldon lays down the rule in Ex-parte Stillitoe to be, "that a partner in a firm against which a commission issues shall not prove a personal debt against that firm, in competition with the creditors of that firm, who are, in fact, his own creditors; and that this general rule admits of no exception, unless when the partner to whom the firm was indebted carried on a distinct trade, and the debt from the firm was in respect of that distinct trade; that the case of two or more partners carrying on a distinct trade is the same as that of one partner carrying on a distinct trade"—that the question to be considered is merely "whether the transaction is to be considered as one between trade and trade." Collier on Partners, sec. 1003.

3. The rule has reference to the proof in behalf of one bankrupt firm against another, when all the partners are included in the commis-

sion. The court, in such case, has both estates under its administration, and the question for decision is simply, whether the claim asserted is entitled to a dividend out of the debtor firm, upon an equal footing with the proper creditors of that firm, or whether the partner or minor firm has only a general partnership account against the other firm, to be settled upon an adjustment of the partnership affairs *inter se*. And the principle appears to be acted on in all the cases, that the one firm will not be held to be a creditor of the other, unless it be clearly shown that it is entitled to occupy that position under the rules above stated; for unless such claims are scrutinized with jealousy, it enables the partner "to come in competition with the creditors of the firm, who are in fact his own creditors."

Let us apply these principles to the facts appearing in this case.

The bill shows that all the partners were the same persons in the three firms; "they transacted *their commercial business* and carried on their *partnership trade*" at three points, under three different "partnership names, firms, and styles," and that "said three firms were entirely separate and distinct from each other, and kept their business, books, and accounts accordingly;" that said three partners "continued to transact their *partnership business* under the said three firms, names and styles," &c.

We think it manifest that these allegations do not bring the claim within the rules laid down.

First. The partners in all the firms are the same persons, and in such cases the claim is not allowed. It is allowed where "two or more, part, but not all, of a larger firm are partners in a distinct trade." Ex-parte Castill, 1 Chitt. Eq. Dig. 113; Eden on Bankrupt Law, 178; Story, Partnership, sec. 394; Collier, Part., sec. 1004. But no case is cited where a claim has been allowed, where all the partners were the same, unless it be Ex-parte Johns; and there a third person was held out to the world as a partner in one of the firms, who was not a partner in the other.

Secondly. It is not sufficient that the "*firms*" should be separate and distinct; it must also appear that the claim arose from "*distinct dealings in the articles of distinct trades*." Story, Part., sec. 394. It appears by the bill that all the partners were engaged in one "*commercial business*" and "partnership trade," but that the three firms were entirely separate and distinct from each other. This language is justly susceptible of no other construction than that the business of each firm was kept separate and distinct from the others. Suppose the New Orleans firm advanced money to the Mississippi firms, for the purpose of purchasing cotton, or making advances to planters, and a balance thereby became due to the New Orleans firm, it could not be said to be a debt in respect to a distinct trade, for aught that appears in the bill. If all the firms were engaged in the business of cotton factors, it would be but an advance by one firm to the others in the course of their business; and though the business of each was kept distinct and separate, the advance would constitute no debt capable of proof by the New Or-

leans firm against the Mississippi firms, but would be but a matter of account between the partners *inter se*. And if the New Orleans house had advanced money generally to the Mississippi houses, the result would not be materially different. It would be but a transfer of a part of their means in New Orleans for their own benefit in Mississippi. And yet such transactions might have been carried on, and the three firms have been "entirely separate and distinct from each other, and kept business, books, and accounts accordingly."

Under the general allegations of the bill, the indebtedness of the Mississippi firms to the New Orleans firm cannot be considered as more than a general indebtedness, without specification as to its character. Being a matter of indebtedness between the same persons engaged in commercial business, though acting under different partnership styles, in the absence of any thing showing the contrary, the reasonable and legal presumption would be that the indebtedness grew out of the regular trade in which the parties were engaged, and did not arise from a distinct trade. In order to test this, let us suppose that the Mississippi firms, had become bankrupt, the New Orleans house remaining solvent; could it be said for a moment that, under the allegations of this bill alone, without showing that the debt claimed was founded on dealings distinct from the partnership trade in Mississippi, the New Orleans firm could have come in *pari passu* with the creditors of the Mississippi firms, and received its dividend of their assets? We apprehend not; and yet this is the attitude in which the debt claimed to be derived from the New Orleans house is presented by the bill: for the fact that the balances were entered on the books of the New Orleans house against the Mississippi houses, would not tend in the least to show that they were founded on *distinct trading* between the firms, unconnected with their partnership, any more than it would show that they originated in partnership dealings, and as balances due in the regular course of their partnership trade. Indeed, the latter would be the more reasonable presumption. Taking all the allegations of the bill with respect to the nature of the claim together, and giving them their just legal force, we think the debt set up in right of the New Orleans firm cannot be treated as a debt due from one distinct trade to another, but that these transactions of the firms are rather to be considered as falling under the rule in Shakeshaft, Stirrup and Salisbury, "as one partnership arranging different concerns belonging to them all, in different ways, for the benefit of that joint concern;" and that the claim was therefore not provable under the bankruptcy of Stanton in Mississippi.

Third. But another objection to the proof is, that there must be joint bankruptcies of all the firms before it can be made. Eden on Bankrupt, 178; Story, Partn. § 394; Cook, Bank. L. 538. When that is not the case, the individual interest only of the bankrupt partner passes to the assignee, who would not be entitled to the entire claim, whatever it might be, of the creditor firm against the debor firm, but only entitled to take the place of the bankrupt partner, and have an account taken between the partners as individuals; and, as is above shown, this is the

only right which the assignee in bankruptcy, or the complainant claiming under him, could have acquired. He could not in any just legal sense claim to be the creditor of the debtor firm for any other purpose than to call for a settlement of the partnership affairs among the individual partners.

There is another view of this branch of the case which has much force in respect to the equity of the complainant's demand.

The right of partners or minor firms in England to prove against the general firm in which they were partners, seems to be limited to the right of *receiving a dividend*, and the firms are regarded as distinct concerns only for the purpose of distribution of assets among their respective creditors. (Eden, Bank. Law, 180.) No case has been cited by the learned counsel for the appellee, where a greater right has been claimed for the creditor firm than to receive a dividend, and this has always been in right and for the benefit of their creditors. When the assignee of the creditor firm has come in and received his dividend in behalf of the creditors he represents, he has obtained all that he was entitled to, and there is no precedent brought to our notice holding that he can assert a further claim against the bankrupt. He has claimed to be a creditor in the distribution of the bankrupt's assets, in competition with his other creditors, treating the proceedings as valid. The claim is allowed in right of the creditors of the creditor firm; and after its avails have been received for their benefit, it would appear that the object of the equitable rule allowing the claim was accomplished, and that it would be anything else than equity to permit it to be still further used at the instance of a mere volunteer, not a creditor, to compel the bankrupt to retrace his steps, to lose all that he had surrendered, a part of which the complainant or his assignor had received, and, without any offer to restore him to his condition, to have all his debts reinstated against him. This is the attitude which the assignee in bankruptcy and his immediate assignee would occupy, and it is the position to which the complainant has succeeded by his purchase from Oakey. In point of mere equity, it is not a position that commends itself very forcibly to the consideration of a court of equity.

We, therefore, think it abundantly manifest that neither the assignee in bankruptcy in New Orleans, nor the complainant claiming title under him, can occupy the position of a creditor of Buckner, Stanton & Co., or of Stanton, Buckner & Co., in virtue of the rights acquired under the bankruptcy of Buckner, and the assignee's sale of assets, under that proceeding, so as to confer a right to impeach the discharge of Buckner or Stanton, or to sue them on account of the claim passed to the assignee in bankruptcy.

In opposition to this view, the decision of the circuit court of the United States for the southern district of this State, on appeal from the district court, allowing the claim of Oakey, as a purchaser of the claims under consideration, and as a creditor of Stanton, has been confidently relied on. As to the soundness of the views taken in that decision, we can only say, with great respect for the distinguished judge who made

it, that we are unable to agree with the conclusion that Oakey became a creditor of the firm of Stanton, Buckner & Co., or of Stanton, by his purchase at the sale of the assignee in bankruptcy, except to the extent above stated. As to the effect of the decision as an *adjudication* of that point by a court of competent jurisdiction, which we are to consider as final and conclusive, we are bound by the judgment, but not by the reasons stated by the court as the ground of it. So far as that *judgment* proceeds, there is no effort to disturb or to question it in this case. The judgment was, that Oakey should prove his claim and receive his dividend out of Stanton's estate. And that judgment has been carried into effect by Oakey's receipt of his dividend. It was a judgment *in rem*, and having been executed, it is *functus officio*, and, upon well settled doctrine, cannot be made the basis of another suit, or otherwise enforced in an independent proceeding in another court. The grounds upon which the court placed its judgment are not part of the *res adjudicata*, and cannot be the basis of a further proceeding founded thereon. We are only bound by what the court has ordered and adjudged to be done.

But giving to that decision all the force that can be attached to it, we do not think that it was intended to extend further than to allow proof of the claim of Oakey, *with a view to a dividend* out of Stanton's estate, in reference to the principles above stated, upon which courts in bankruptcy in England proceed in like cases; and for that purpose alone must he have been declared a creditor. This would not give him the rights of a creditor in whose behalf a general judgment for so much money was rendered, which is the assumption on which the bill is based.

II. The second question which we will consider is, whether the debts against the appellants, having been proved in bankruptcy, and dividends having been received upon them from the bankrupt's effects, the creditor can afterwards bring any suit against the bankrupts founded on them.

This question depends upon the proper interpretation to be given to certain parts of the fifth section of the Bankrupt act of 1841, which provide "that all creditors coming in and proving their debts under such bankruptcy in the manner hereinafter prescribed, the same being *bona fide* debts, shall be entitled to share in the bankrupt's property and effects, pro rata, &c." * * "*And no creditor or other person coming in and proving his debt or other claim shall be allowed to maintain any suit at law or in equity therefor, but shall be deemed thereby to have waived all right of action and suit against such bankrupt; and all proceedings already commenced, and all unsatisfied judgments already obtained thereon, shall be deemed to be surrendered thereby*," &c.

The language here employed appears to have been well considered. It is plain, definite and comprehensive in itself, without anything in the other parts of the act tending to limit its force or extent. It had been provided in the fourth section, that the bankrupt's discharge and

certificate should be a complete bar to all suits against him, unless the same should be impeached for some fraud or wilful concealment by him of his property, thereby giving to all creditors the general right of impeaching the discharge for fraud. Then comes the fifth section, which was plainly intended to be a limitation upon this right, by providing that if *any creditor* should come in and "share in the bankrupt's property and effects," he should be deemed thereby to have waived all right of action or suit against the bankrupt. These provisions appear to be so definite and obvious, that it is difficult to perceive how they can be restricted to any particular class of debts or claims, without doing violence to the general and comprehensive language, and, indeed, without interpolating upon the act exceptions and qualifications which Congress has not seen proper to specify or indicate. The policy manifest from the provisions of the two sections is, that *any creditor* who did not come in and take the benefit of the bankrupt's property and effects surrendered, should be permitted to impeach his discharge for fraud, but that if *any creditor* should make his election to come in and share the bankrupt's property and effects, he should do so with full notice that he would thereby be concluded from all right of action, either at law or in equity, against the bankrupt. (Ex-parte Comstoc., 5 Law Reporter, 165; Everett vs. Day, Ib. 227; In re Tibbetts, Ib. 265.)

The fourth section fixes the character and legal effect of the certificate, and expressly reserves to all persons having claims "*proveable*" under the bankruptcy, the right to impeach it for fraud. The fifth section applies to claims "*proved*," and fixes the legal effect of that act. The two kinds of claims are thus placed in juxtaposition; and it is worthy of observation, that while as to those that are merely "*proveable*," a right to impeach the certificate is expressly reserved, no such right is reserved as to those that are "*proved*." Why this reservation in the one case and silence in the other? The answer is found in the plain and emphatic language of the fifth section, concluding the creditor of all further remedy whatever.

The correctness of this view is still more evident when we consider that unless the proof and receipt of a dividend were intended to conclude all further claim against the bankrupt, and as an adoption and ratification of his bankruptcy, these provisions of the fifth section are useless: for the right to impeach the certificate and discharge for fraud was already reserved in the fourth section; and if it was contemplated that the creditor should have the right to impeach them, notwithstanding his proof of his claim and receipt of a dividend, these carefully worded provisions of the fifth section mean nothing and are wholly useless.

We think it clear, therefore, as well from the language as from the general purview of the act, that the fifth section intended to put an end to all further controversy whatever against the bankrupt, at the instance of a creditor who had come in and proved his claim and received his dividend.

Against this construction of the act several objections are urged, which it is proper for us to examine.

1. It is said that the waiver was intended to apply to fiduciary debts and foreign creditors, and not to creditors generally, because fiduciary debts, &c., were exempted from the operation of the act, and were not barred by the discharge, and, therefore, that the provision was made in order to bring such debts within the operation of the act; but that no such provision was necessary as to general debts, which were discharged, whether proved or not in bankruptcy.

We do not consider this position tenable, for several reasons:

1st. The language is general, and expressly embraces "*all* creditors coming in and proving their debts"—"*no* creditor or *other person* coming in and proving his debt or other claim"—"all proceedings already commenced, and all unsatisfied judgments already obtained thereon," &c. This language is altogether inconsistent with the idea that any particular class of creditors was in contemplation.

2d. If it had been intended to embrace only such debts as were exempted from the general operation of the act, it is not to be supposed that these provisions would not have made special reference to such claims. And it would indeed be strange, that, in an act so well considered, and showing such careful phraseology, a provision should be made with regard to claims not affected by the bankrupt proceedings, and in such general and comprehensive terms as to include all debts within the operation of the act constituting the great mass of the bankrupt's debts. It would be much more reasonable to conclude that the general provisions of the act were made without reference to those debts which did not come within the operation of the act, and were not to be discharged under it. But if they were contemplated, it is clear that they are but put upon the same footing with general debts, and that all alike are within the operation of the rule established by this section. 2 How. (S. C.) 202.

3d. If the provision be construed to conclude fiduciary creditors who have proved their claims and received their dividends, and not to apply to general creditors who have done the same thing, the result would be that the former, who are manifestly a favored class by the provisions of the act, would be placed in a worse condition than the latter, to whom no special indulgence was intended to be shown. The favored creditors would be concluded, and the less favored be at liberty to disregard the bankruptcy, though both classes had done but the same thing, proved their claims and received their dividends. Such a construction cannot be sustained.

2. It is said that the terms of the act would conclude a creditor who had merely come in and proved his debt, in order to contest the bankrupt's discharge, and who had taken no dividend, and that such a claim would be barred, though the bankrupt was not discharged.

This objection is not sustained by the spirit of the fifth section, nor by the general policy of the act. The policy of the act and the true intent of this provision had reference to all creditors coming in and

proving their debts, in order to "*be entitled to share in the bankrupt's property and effects*," and who should receive their dividends of the same. And accordingly, it has been held that persons coming in for the purpose of merely contesting the right to a discharge were not embraced in the provisions and were not concluded. Morse vs. City of Lowell, 7 Metc. 152; Haxteen vs. Corse, 2 Barb. Ch. 156. But the same cases hold that the creditor is concluded by receiving a dividend; and in the case of Chapman vs. Forsyth, 2 How. 202, the Supreme Court United States say, in reference to a fiduciary debt, "if he not only proves it, but receives his proportionate share of the dividend, he is estopped from saying that he was not within the law. As a creditor, he has a right to come into the bankrupt court and claim his dividend. *He does not establish his claim as a fiduciary one, but as a debt proveable under the statute; and having done this, he can never controvert the discharge.*" (7 Metcalf, 430.)

3. But it is insisted, nevertheless, that if the bankrupt's discharge was obtained in fraud of the act of Congress, it affords him no protection, and may be impeached as a fraudulent judgment, upon general principles of equity jurisdiction.

Whatever may be the extent to which this general principle of equity should be justly applied, whether to matters of fraud which took place before the judgment, and which the parties concerned had an opportunity of contesting, or to fraudulent acts done in the very fact of obtaining the judgment, and which could not have been contested, we do not consider it applicable to a case of this particular nature, by reason of a counter equitable rule established by the Bankrupt act. That rule is, that when a party has made his election to take the benefit of the bankrupt's effects, he shall thereby be precluded of all rights of action either at law or in equity against him, and in the language of the Supreme Court of the United States, above quoted, "can never controvert his discharge." All the cases that have been cited declare this rule, either directly or by recognition, and none has been adduced holding to the contrary. This effect of the creditor's act is so obviously created by the Bankrupt law, that to hold the contrary would be to violate its positive provisions and manifest design. (Humphreys vs. Swett, 31 Maine, 192.

III. The only remaining question which we deem it necessary to examine is, whether the complainant's claim is barred by the statute of limitations.

In order to prevent the operation of the statute, the bill alleges that neither Oakey, nor Montgomery and Boyd, nor the complainant, had any knowledge or notice of the alleged frauds committed by the appellants before their discharges as bankrupts, nor of any facts calculated to put them upon inquiry in relation to the said frauds, until within eighteen months preceding the filing of the bill. It is not alleged that any fraudulent representations have been made by Buckner or Stanton to the complainant or any of his assignors since their discharges, or that any direct acts of concealment of the alleged frauds have been practised

by them upon the complainant or any of his assignors before or since their discharges, by which the complainant and his assignors were prevented from discovering the frauds; nor does it appear that any effort was made to discover the frauds until within eighteen months before the filing of the bill, the bill merely alleging that, within that time, every effort has been used to make the discovery. The frauds, as charged in the bill, consist in making fraudulent preferences of creditors, by means of negotiations in bank, and appropriating their assets to that purpose, and in fraudulent concealments of their property and assets, in fraud of their general creditors—all done before they filed their petitions, and in contemplation of bankruptcy.

The general rule is well established in courts of equity, that, in cases of fraud, the statute of limitations begins to run only from the time of discovery of the fraud; and that, in many cases of that nature, the court will interfere to prevent the bar of the statute. But this rule is not without its restrictions, and will not be applied where, in reference to other principles of equity, it would defeat the policy and equitable operation of statutes of limitation; and consequently there are many limitations to the operations of this rule. Thus, it will not apply where the party affected by the fraud might, with ordinary diligence, have discovered it. In the leading case of Smith vs. Clay, Ambler, 645, Lord Cowden laid down the principle which has ever since been sanctioned, thus: "A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, when the party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. Where these are wanting, the court is passive and does nothing. Laches and neglect are always discountenanced." In Bond vs. Hopkins, 1 Sch. and Lef. 429, Lord Redesdale said: "If the party be guilty of such laches in prosecuting his equitable title as would bar him if his title were solely at law, he shall be barred in equity." And this principle has been repeatedly sanctioned by the most learned courts and ablest jurists of this country. (Kane vs. Bloodgood, 7 J. C. R. 90; 2 Story's Eq. Jur., sec. 1520, and the numerous cases there cited.) The rule is thus stated in Angell on Limit. 295: "The presumption is, that if a party affected by any fraudulent transaction or management might, with ordinary care and attention, have seasonably detected it, he seasonably had actual knowledge of it." In a very elaborate and learned opinion by Chief Justice Parker, in Farman vs. Brooks, 9 Pick. 246, he says: "If the aggrieved party knew of the fraud when it was committed, or had full possession of the means of detecting it, which is the same as knowledge, neglect to bring forward his complaint for more than six years will deprive him of his remedy and right, too, upon the very principles and reasons upon which the statute of limitations was enacted." "Courts of equity will not interpose, if a party slumber upon his right unreasonably after the detection of fraud, or the means afforded of detection." (Angell on Limit. 201; Johnson vs. Johnson, 5 Ala. Rep., N. S., 90.)

In order to excuse the use of proper diligence, it is well settled, upon reason and authority, that there must exist some relation of trust and confidence, as principal and agent, client and attorney, *cestui que trust* and trustee, between the party committing the fraud and the party who is affected by it, which rendered it the duty of the former to disclose to the latter the true state of the transaction, and showing that it was through confidence in the acts of the party who committed the fraud that the other was prevented from discovering it. If the relation of trust and confidence does not exist, and the acts complained of were not committed while that relation existed, it must be shown that some positive fraudulent representation or concealment directly towards the party injured was done, which lulled him into security, and caused him to rely upon the good faith of the other party. In the absence of these circumstances, it is clear that, when the right of action results from the fraud, the cause of action accrues from the time of the commission. These principles will be found to have governed all the leading cases upon this subject; and in much the greater part of them the relation of trustee and *cestui que trust*, or some other such relation, gave rise to the complaint. This was the case in Livermore vs. Johnson, recently decided by this court, and which is much relied on in behalf of the appellee in this case. In that case, after stating that it was contended to be not only a case of implied trust, but that it was accompanied by fraud, committed under circumstances which were calculated to keep concealed from the complainants a knowledge of the transaction, it is said: "It has long been the settled rule in England, that when a party has been *kept in ignorance* of his rights by the fraud of the person sought to be charged, the statute shall not begin to run until after the fraud has been discovered." But when this relation of trust and confidence does not exist in the nature of the transaction, and has not superinduced the injury, there must be actual fraud, or some positive act of misrepresentation, deceit, or continued concealment towards the party affected by the fraud, to prevent the running of the statute. In the case of Farnam vs. Brooks, above cited, the learned judge sums up the parts of the rule thus concisely but comprehensively: "*That in cases of fraud, where the facts constituting the fraud are known, or where there is no subsisting trust or continuing influence, the same principle will apply;*"—that is, the statute will not be impeded.

When we apply these principles to the statements of this bill, which are relied upon to prevent the running of the statute, we think it manifest that they are insufficient to prevent its operation.

It is not pretended that the relation of trust and confidence in any respect existed between Buckner and Stanton and the parties holding these claims, or that any actual fraud, by positive acts towards those parties, or any continuing influence after the return of the bankrupt schedules, was used, by which the parties were prevented from using efforts to discover the frauds. For aught that appears in the bill, the frauds might have been as well discovered by the exercise of due diligence within eighteen months after their commission, as within eigh-

teen months before the filing of the bill. From their nature, as charged, they were open, and entirely capable at all times of being detected. The proceedings in bankruptcy were open to examination, and all parties interested were notified to contest them, if they thought fit to do so. Thus all parties were placed at arm's length, and each upon his own rights, with nothing of confidence or trust existing between them. The means of detecting the frauds in the bankrupt's schedules were accessible by proper diligence, even before their discharges were granted; but if not then, certainly, for aught that is shown in the bill, within the period limited by law for bringing an action.

Apart from the technical defence of the statute of limitations, it is a well-established rule of equity, that judgments will not be disturbed, nor new trials granted and matters of litigation re-opened, unless it be shown that all proper diligence has been used in the prosecution of the complainant's rights. If this were not so, what length of time, and what extent of laches would preclude a party from re-opening settled transactions by a bill in equity? It would all rest in the undefined and arbitrary discretion of a court of equity, and the citizen could never know when he might safely repose in the confidence that long-settled transactions and even solemn judgments were beyond the reach of this formidable power. He would be subject at all times to have his rights opened to new examination, with his evidences lost, his witnesses dead, and all his means of justification impaired by the great lapse of time. Nothing could be considered as settled finally, however solemnly adjudicated or long acquiesced in, and all confidence in the judgments of courts of justice would be shaken. It is for the purpose of suppressing this mischief that courts of equity have sanctioned the principle of statutes of limitation, and applied it in all cases when the complainant does not bring his case within the recognised exceptions; not that it may not in some instances work individual injustice, or give a protection to fraud, but that it is better to act upon a rule which promotes the general peace of society, than to make an exception for an individual case, and thereby introduce a dangerous precedent.

In the present case, there was a lapse of about eleven years, according to the statements of the bill, before any efforts were made to investigate the alleged frauds, when from their nature, as stated, they were open to detection all this period of time. It would be dangerous and mischievous in the extreme to sanction a rule that would, under such circumstances, permit transactions so long acquiesced in, and involving immense interests, not only to the parties directly implicated, but in all reasonable probability to innocent persons whose rights are connected with, or dependent upon them, to be set aside and annulled, without the clearest equity shown by the complainant, and the absence of all laches. Such rights are not to be disregarded at the instance of a mere volunteer. The laches of his assignors, not occasioned by the positive acts of the parties implicated, since their discharge, is a sufficient ground for refusing the relief sought in equity; and that objection would apply with additional force to the complainant, who was not a creditor

of these bankrupts, and was not injured by the alleged frauds, but has voluntarily placed himself in the attitude of a speculator in litigation. He cannot complain that his claim fails under the application of the well-established rules of the court whose aid he has sought.

We are brought to the conclusion, by the foregoing views, that this bill cannot be maintained, and that the demurrer to it should have been sustained.

The decree of the chancellor is therefore reversed, and the bill dismissed.

HANDY.

THE STATE OF MISSISSIPPI,
High court of errors and appeals.

I, Caswell R. Clifton, clerk of said court, do hereby certify, that the preceding thirty pages and a half do contain a true copy of the opinion of said court, delivered in writing by the Hon. A. H. Handy, one of the associate judges of said court, in the case therein stated, as the same remains of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the [L. S.] seal of said court, at office, at the capitol at Jackson, this 23d day of August, A. D. 1855.

CASWELL R. CLIFTON, *Clerk*,
By SAMUEL LIVINGSTON, *D. C.*

SUP. COURT U. STATES.

JAMES L. CALCOTE, plff. in error,
vs.
HENRY S. BUCKNER and FRED'K STANTON.

It is agreed that the foregoing opinion of the high court of errors and appeals of the State of Mississippi be printed as a part of the record already printed in the above cause, in the same manner as if it had been included in the transcript filed by the plffs. in error.

J. P. BENJAMIN,
For deft's in error.
REVERDY JOHNSON,
For plff's in error.